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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 566

In the Matter of the Estate of
ANTON BELEMECICH, Deceased

THE CONSUL GENERAL OF YUGOSLAVIA AT PITTSBURGH, PENNSYLVANIA, as Attorney-In-Fact for ANE BULIK, MATO BELEMECICH, ANE BELEMECICH KLJUNAK, MARIA BELEMECICH AND PERA BELEMECICH BOSCOVICH, *Petitioner*

v.

COMMONWEALTH OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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THE CONSUL GENERAL OF YUGOSLAVIA AT PITTSBURGH, PENNSYLVANIA, as Attorney-In-Fact for ANE BULIK, MATO BELEMECICH, ANE BELEMECICH KLJUNAK, MARIA BELEMECICH AND PERA BELEMECICH BOSCOVICH, *Petitioner*

v.

COMMONWEALTH OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

The petitioner, the Consul General of Yugoslavia at Pittsburgh, Pennsylvania, as attorney-in-fact for Ane Bulik, Mato Belemecich, Ane Belemecich Kljunak, Maria Belemecich and Pera Belemecich Boscovich, appellant as such attorney-in-fact in the proceeding below, prays that a writ of certiorari issue to review the judgment therein of the Supreme Court of Pennsylvania.

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania per Musmanno, *J.*, and the dissenting opinion of Cohen, *J.*, are reported at 411 Pa. 506 and 192 A. 2d 740, and are set out in App. A, pp. 1a-9a, *infra*. The opinions of the Orphans' Court of Delaware County, Pennsylvania, incorporated in its Adjudication Sur First Account and Order Amending and Modifying Adjudication, are not reported. They are set out in App. B, pp. 11a-20a, *infra*.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania, affirming the Adjudication Sur First Account of the Orphans' Court of Delaware County, Pennsylvania, as amended and modified by the latter's Order Amending and Modifying Adjudication, is dated and was entered July 2, 1963. App. A, p. 1a, *infra;* R 1. The petitioner's timely petition for reargument, filed July 11, 1963, was denied July 23, 1963, and the matter was remitted July 25, 1963. App. A, pp. 9a, 10a, *infra;* R 1, 116, 129. The jurisdiction of this Court is invoked under Tit. 28 U. S. C. Sec. 1257 (3).

QUESTION PRESENTED

Whether the rights of Yugoslav citizens and residents under Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 in force and effect between the United States and Yugoslavia, to possess and dispose of property located in the United States acquired by them by inheritance, are co-extensive with their right thereunder, as determined by *Kolovrat* v. *Oregon*, 366 U. S. 187 (1961), to inherit such property as though they were American citizens living in the State where such property is located.

TREATY AND STATUTE INVOLVED

The treaty provisions involved are those of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation) concluded between the United States and Serbia on October 2/14, 1881, 22 Stat. 963, Tr. Ser. 319, currently in force and effect between the United States and Yugoslavia. *Kolovrat* v. *Oregon*, 366 U. S. 187 (1961). Such provisions are set out in App. C, pp. 21a-22a, *infra*. The statutory provisions involved are those of the Pennsylvania Act of Assembly of July 28, 1953, P. L. 674, 20 Purdon Penna. Stats., Secs. 1155-1159, which are set out in App. D, pp. 22a-24a, *infra*.

STATEMENT

Anton Belemecich, a resident of Pennsylvania, died intestate on October 13, 1958. He left a net estate, before State and Federal taxes, of some $78,000.00 which was administered in the Orphans' Court of Delaware County, Pennsylvania. That Court determined that the decedent's sole survivors entitled to share in his estate under the intestacy laws of Pennsylvania were the five Yugoslav citizens and residents for whom the petitioner is attorney-in-fact; a sister of the decedent, and a nephew and three nieces, children of decedent's pre-deceased brother. App. B, pp. 11a, 12a, *infra;* R 14b, 38, 65, 86b.[1] Nevertheless, the Court refused to order that distribution be made to them, or for their account to their attorney-in-fact, who was

[1] In certifying the record, the Prothonotary of the Pennsylvania Supreme Court numbered only the obverse of the pages printed on both sides. The "b" references are to the reverse sides of the pages bearing the numbers indicated.

fully authorized to receive the same and give acquittance therefor, but awarded the distributive share of each, in cash, to "The Department of Revenue of the Commonwealth of Pennsylvania for payment into the State Treasury of the Commonwealth of Pennsylvania without escheat, to be held for" his or her "benefit". App. B, pp. 16a-18a, *infra;* R 60b-64, 68-69b. The Court took such action at the instance of the Pennsylvania Department of Revenue, and, as the Court put it, App. B, pp. 14a, 16a, *infra*, "Conformably to the provisions of * * * 'The Iron Curtain Act * * *'", i.e., the Pennsylvania Act of Assembly of July 28, 1953, App. D, pp. 22a-24a, *infra*, which authorizes the Court to so do, in the case only of a beneficiary residing outside the United States, if "it shall appear to the court that if distribution were made * * * [such] beneficiary would not have the actual benefit, use, enjoyment or control" of his inheritance.

In concluding to withhold the distributive shares of petitioner's principals from them, the Orphans' Court said that it was not inspired, App. B, pp. 15a-16a, *infra;* R 67b-68:

> with any confidence that an award to residents of Yugoslavia would meet the objectives of the public policy of the Commonwealth as enunciated * * * in the so-called "Iron Curtain Act".
>
> * * *
>
> It appears to this court that under prevailing conditions and on the basis of the conflicting testimony * * * there is no assurance that the non-resident alien heirs of this decedent will have the beneficial use of their inheritance * * *.

The attention of the Orphans' Court was directed both by argument during the hearings, and by brief

after the taking of testimony had been completed, to the 1881 Convention in force and effect between the United States and Yugoslavia, and to this Court's decision in *Kolovrat* v. *Oregon*, 366 U. S. 187 (1961). R 17, 38b-40. In its Adjudication, the Court merely noted that the beneficiaries' attorney-in-fact "contended that by virtue of the applicable treaty provisions * * * he is entitled to receive the distributive shares * * *". App. B, p. 14a, *infra;* R 67. The 1881 Convention and *Kolovrat* were also the basis of exceptions taken on behalf of the beneficiaries to the Orphans' Court's Adjudication. R 70b, 71, 71b, 72b.

The "conflict" that the Court purported to see in the testimony is plainly illusory, and there is nothing in the record to support the Court's lack of "confidence". Certainly, nothing in the testimony of the Department of Revenue's "expert" on Yugoslav law, R 30b-50a, supports the Orphans' Court's conclusions, and one can search the record in vain for any support for them. The Orphans' Court seems clearly to have recognized this. For, following the taking of appropriate exceptions, R 70-72b, the Orphans' Court amended and modified its Adjudication, expressly, to use the Court's own words, "*for the purpose of ascertaining the true facts concerning this problem.*" App. B, p. 19a, *infra;* R 73b. To this laudable end, the Orphans' Court amended and modified its Adjudication to provide that the funds constituting the estate be paid to the Clerk of the Court, to be held by him pending the Court's further order, rather than to the Department of Revenue for payment into the State Treasury, and to provide further, that upon receipt of such funds, the Clerk pay $2,500.00, not to the attorney-in-fact for the heirs, but to his attorney in the matter, who would personally

be charged with sending each of the heirs $500 and, App. B, p. 20a, *infra;* R 73b-74b,

> with the responsibility of securing receipts in writing, containing completely-itemized statements of any and all expenses, charges, and deductions, if any, which may have been made, and the exact amounts actually received by the distributees respectively, shall be submitted to the Court for inspection immediately upon delivery to the distributees.

Counsel properly declined to participate in this humiliation of his client. R 80b, 81.

On appeal, the Supreme Court of Pennsylvania affirmed. In its opinion, per Musmanno, *J.*, it confirmed the accuracy of the Orphans' Court of Delaware County in its use of the phrase "Iron Curtain Act" with reference to the Pennsylvania Act of Assembly of July 28, 1953, saying, 411 Pa. at 508, 192 A. 2d at 741; App. A, p. 2a, *infra;* R 3:

> This Act carries the sobriquet of "Iron Curtain Act" because its purpose is to protect the moneys, physically in America, but belonging to people who fatefully find themselves behind the Iron Curtain of Communism. It is a commendable and salutary piece of legislation because it provides for the safekeeping of these funds even with accruing interest, in the steel-bound vaults of the Commonwealth of Pennsylvania until such time as the Iron Curtain lifts or sufficiently cracks to allow honest money to pass through and be honestly delivered to the persons entitled to them.

With this as its premise, the Court below proceeded forthwith to its conclusion, 411 Pa. at 509, 511, 192 A. 2d 742, 743; App. A, pp. 3a-5a, *infra;* R 5, 6:

> To argue that Yugoslavia is not behind the Iron Curtain is to argue that it is not on the eastern side of the Atlantic Ocean. There are certain well-known, indisputable geographical and historical facts which require no substantive proof in Court, and one of those irrefutable, if unfortunate, realities, is that Yugo Slavia, as the Court below found, is a satellite state where the residents have no individualistic control over their destiny, fate or pocketbooks, and where their politico-economic horizon is raised or lowered according to the will, wish or whim of a self-made dictator.[2]
>
> * * *
>
> All the known facts of a Sovietized state lead to the irresistible conclusion that sending American money to a person within the borders of an Iron Curtain country is like sending a basket of food to Little Red Ridinghood in care of her "grandmother". It could be that the greedy, gluttonous grasp of the government collector in Yugo Slavia does not clutch as rapaciously as his brother confiscators in Russia, but it is abundantly clear that there is no assurance upon which an American court can depend that a named Yugo Slavian individual beneficiary of American dollars will have anything left to shelter, clothe and feed himself once he has paid financial involuntary tribute to the tyranny of a totalitarian regime.

While the Court below made plain that it did not require any evidence in order to reach these conclusions, it made no pretense to omniscience. On the contrary, it relied heavily on opinions of judges of the Orphans' Courts of Erie and Luzerne Counties, from which it quoted at length, and in which almost

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[2] The Court's apparent extension of Yugoslavia to the "eastern side of the Atlantic" is reminiscent of the Bard's gift of a seacoast to Bohemia. But while Yugoslavia, unlike Bohemia, has a seacoast, it is, of course, on the eastern side of the Adriatic, not the Atlantic.

identical conclusions with respect to *Poland* were reached, also without evidence, on the basis of "common knowledge" and "judicial notice". App. A, p. 4a, *infra*. But, to give the Court below its due, like the Orphans' Court of Delaware County, it tardily exhibited an instinctive, if well-suppressed need for "true facts". However, there was nothing for the Court below to lean on but the slim reed, if reed it be at all, of the testimony of Rothkopf, the "expert" witness on Yugoslav law who had been called on behalf of the Pennsylvania Department of Revenue. R 30b-50b. Grasping at a straw, the Court below sought to hide the hollowness of its bombast by saying that Rothkopf, 411 Pa. at 511, 192 A. 2d at 743; App. A, p. 5a, *infra;* R 6,

> testified to the chains of economic restrictions which bind Yugo Slavian citizens. * * * This witness's testimony confirmed and verified the conclusions reached through the process of judicial notice.

The absurdity of the Court's characterization of Rothkopf's testimony is laid bare by the record. R 30b-50b.

After intemperately, and wholly without warrant, characterizing the heirs' expert as "emboldened", and his testimony as "audacious", 411 Pa. at 512, 192 A. 2d at 743; App. A, p. 6a, *infra;* R 7, the Court below (other than Cohen, *J.*, who dissented on this score), proceeded to hold without pertinence both the 1881 Convention, App. C, pp. 21a-22a, *infra*, and this Court's decision in *Kolovrat* v. *Oregon*, 366 U. S. 187 (1961) which had been briefed and argued to it on behalf of the beneficiaries as controlling. App. A, pp. 7a, 8a, *infra;* R 81-84. As to the Convention, the Court, with no little casuistry, said, 411 Pa. at 513, 192 A. 2d at 743; App. A, p. 7a, *infra;* R 8:

> Under the decision in this case, there is no denying to the citizens of Yugo Slavia the right of inheritance * * *. The Act * * * upon which the Court based its adjudication is intended, not to breach the sanctity of the treaty * * * but to guarantee that its provisions are upheld so that the beneficiaries will actually and not only technically or figuratively receive the amounts due them.

With regard to *Kolovrat*, the Court below said merely, 411 Pa. at 514, 192 A. 2d at 744; App. A, p. 8a, *infra;* R. 8:

> The Oregon statute involved in that litigation was a confiscatory one. The one before us is merely custodial. * * * When the day arrives that the Iron Curtain of distrust and hostility * * * melts and is molded into an open portal of understanding, good will and mutual respect, then the money left them by their brother and uncle * * * will be turned over to * * * [the heirs].

Apparently deafened by its own magniloquence, the Court below had obviously failed to hear what Mr. Justice Black said for a unanimous Court in *Kolovrat*, 366 U. S. at 196:

> We hold that under the 1881 Treaty * * * these Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Oregon * * *.

By the same token, these admitted heirs have the same right to take possession, and to dispose of their Pennsylvania inheritance as they would if they were American citizens living in Pennsylvania. For, the very provision, indeed, the identical sentence and clause, that grants them their "most favored nation" right to acquire property in the United States by inheritance,

or otherwise, also grants them, on identical terms, the right to possess and dispose of such property. App. C, p. 21a, *infra*.

REASONS FOR GRANTING THE WRIT

1. Whether under Article II of the 1881 Convention in force and effect between the United States and Yugoslavia, a State of the United States may deny to Yugoslav citizens residing in Yugoslavia the right to possess and dispose of their distributive shares in a decedent estate within the jurisdiction of such State, on a ground which would not be equally applicable to a citizen of the United States living in such State, is a Federal question of substance which the Court below decided in a way not in accord with the decision of this Court in Kolovrat v. Oregon, 366 U.S. 187 (1961).

2. The applicability to Yugoslav citizens and residents of the laws of many States concerning the withholding and impounding of the distributive shares in decedent estates of beneficiaries residing abroad, depends upon whether the rights granted by Article II of the 1881 Convention include the right to possess and dispose of such distributive shares.

1. The Pennsylvania statute, which the Courts below purported to apply, is expressly limited by its own terms to the distributive share of a "beneficiary"—i.e., "any legatee, devisee [or] distributee"—"who is not a resident of the United States, its territories or possessions". Pennsylvania Act of Assembly, July 28, 1953, Sec. 1, 20 Purdon Penna. Stats. Sec. 115; App. D, p. 22a, *infra*. Thus, it is *only* in respect of a beneficiary residing abroad that the statute empowers and authorizes the Court having jurisdiction of an estate "to withhold distribution of the share of * * * [a] beneficiary, convert it into cash, and pay it through the Department of Revenue into the State Treasury without escheat" if "it shall appear to the court that if distribution were made" the beneficiary "would not have the actual benefit, use, enjoyment or control of

money or other property distributed to him * * *." Pennsylvania Act of Assembly, July 28, 1953, Sec. 2, 20 Purdon Penna. Stats. Sec. 1156; App. D, pp. 22a, 23a, *infra*. Moreover, the action of the Courts below, whether or not in conformity with the Pennsylvania statute, was both in fact, and of necessity, predicated upon the residence abroad of the estate's sole beneficiaries.

However, after an intensive analysis of the language, objectives, background and diplomatic history of the 1881 Convention, as well as the diplomatic correspondence concerning it, this Court unanimously held in *Kolovrat*, 366 U. S. at 196, that under it Yugoslav citizens and residents, survivors of an Oregon decedent, had

> the same right to inherit their relatives' * * * property as they would if they were American citizens living in Oregon * * *.

Obviously, if the Yugoslav survivors of the Pennsylvania decedent with whose estate we are here concerned, were American citizens living in Pennsylvania, the statute on the basis of which the Courts below withheld their distributive shares would have been wholly inapplicable. Accordingly, the decision of the Court below flies directly in the face of this Court's decision in *Kolovrat*, unless the "right to inherit" of which this Court spoke in *Kolovrat*, is merely the bare, naked right to be declared a distributee, without any right to distribution unless and until conditions in Yugoslavia are completely to the satisfaction of the authorities in the State where the decedent's property is located.

But no such narrow meaning can be attributed to this Court's holding in *Kolovrat*. For, in reaching its

conclusion in *Kolovrat*, this Court said, 366 U. S. at 194:

> The rights conferred by the 1881 Treaty, broadly stated as they are, would fall far short of what individuals would hope or desire for their complete fulfillment if one who by work and frugality had accumulated property as his own could be denied the gratification of leaving his property to those he loved the most, simply because his loved ones were living in another country where he and they were born. * * * It is not in such a niggardly fashion that treaties designed to promote the freest kind of traffic, communications and associations among nations and their nationals should be interpreted, unless such an interpretation is required by the most compelling necessity. There is certainly no such compulsion in the 1881 Treaty's language or history.

In any event, the 1881 Convention itself precludes any interpretation that the rights thereby granted to possess and dispose of property acquired by inheritance, are more limited than the right it also grants to inherit property, for all such rights are granted collectively, upon the identical terms and conditions, in the single sentence comprising the first paragraph of Article II, App. C, p. 21a, *infra*:

> In all that concerns the right of *acquiring, possessing or disposing* of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation. [Emphasis supplied].

Moreover, the diplomatic correspondence between the United States and Yugoslavia, set out in full in the

Appendix to the Brief of the United States, as amicus curiae, in *Kolovrat* v. *Oregon*, No. 102, October Term 1960, pp. 41-60, and in pertinent part in App. E, pp. 24a-29a, *infra*, shows that the responsible agencies of the United States and Yugoslavia construe Article II of the 1881 Convention as according citizens of their respective countries, regardless of residence, the right to transfer from the other, moneys, and the proceeds of other property acquired by them there through inheritance. Thus, under date of November 4, 1957, the Yugoslav Embassy informed the State Department, *op. cit. supra*, p. 42, App. E, p. 24a, *infra*,

> The Government of Yugoslavia has always recognized the right of an American citizen to have his funds derived from inheritance in Yugoslavia transferred to him in the United States in Dollars * * *.

Again, in a note to the Secretary of State, dated April 18, 1958, the Yugoslav Ambassador said, *op. cit. supra*, pp. 49, 50, App. E, p. 26a, *infra*:

> It is further the construction of the Yugoslav Government that by virtue of the most-favored-nation clause and * * * Article II of the Convention of 1881, American citizens, wherever they may physically be or permanently reside, have and must be accorded the right to withdraw and export, i.e. have transferred to them upon request to the United States or wherever they may direct, moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from sale of inherited property in Yugoslavia.

In a note dated April 24, 1958, the Secretary of State responded, *op. cit. supra*, p. 57, App. E, p. 28a, *infra*, as follows:

> The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Con-

> vention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (*including the rights of inheritance and transfer of proceeds thereof*), shall be accorded likewise in this country to Yugoslav nationals *wherever resident* * * *. [Emphasis supplied.]

It was with particular reference to the correspondence from which the foregoing is quoted that this Court said in *Kolovrat*, 366 U. S. at 194, "the meaning given * * * [treaties] by the departments of government particularly charged with their negotiation and enforcement is given great weight."[3]

In deciding as it did, that the 1881 Convention was without relevance, the Court below clearly reached a result not in accord with *Kolovrat*.

2. The Yugoslav citizens, who are entitled to the rights granted by Article II of the 1881 Convention,

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[3] In addition to Article IX of the Treaty of Friendship, Commerce and Navigation of 1853, between the United States and Argentina, 10 Stat. 1005, 1009, 1 Malloy 20, to which this Court referred in *Kolovrat*, 366 U.S. at 193, as a basis for "national" treatment under the most-favored national clause of Article II of the 1881 Convention, reference, in this regard, can also be made to the following provisions of Treaties of Friendship, Commerce and Navigation between the United States and other nations: Art. IX, Secs. 3, 4, 5; Art. XII, Sec. 1, of the 1956 Treaty with The Netherlands, TIAS 3942; Art. X, Secs. 2, 3, 4; Art. XII, Sec. 1, of the 1954 Treaty with Federal Republic of Germany, TIAS 3593; and Article IX Secs. 3, 5; Art. XII, Sec. 3 of the 1954 Treaty with Israel, TIAS 2948, which expressly grant the right of "national treatment" with respect to acquiring, by inheritance, or otherwise, and possessing and disposing of property, and specifically, in regard to transfers of funds from one country by citizens of the other.

are entitled to such rights throughout the United States. But, in addition to the Pennsylvania statute, there are also statutes in Massachusetts, New York, Ohio, Oregon and Wisconsin, and perhaps other States, under which, in substance, the distributive shares of beneficiaries of decedent estates, residing in foreign countries, may be withheld and impounded, or even, in Oregon, escheated, in circumstances similar to those prescribed by the Pennsylvania statute involved in this case.[4]

Regardless of their purpose or merit, if, under Article II of the Convention, the right of Yugoslavs, wherever resident, to possess and dispose of their property in this country, is co-extensive with their right to inherit property here—i. e., as was held in *Kolovrat*, "the same right * * * as they would if they were American citizens living in" the State where the property is located—then these statutes are not applicable to them. *Kolovrat* v. *Oregon*, 366 U. S. 187 (1961); *Clark* v. *Allen*, 331 U. S. 503, 515, 517 (1947); *Hauenstein* v. *Lynham*, 100 U. S. 483 (1880). But, in the absence of action by this Court directed with particularity to this question, the existence of these statutes leaves the way open for conflicting constructions of the Convention by State courts and the consequent anomaly of a treaty of the United States concerning important private rights, and uniformly applicable throughout the United States, being given different meanings in different States.

Furthermore, in application, these statutes present the anomaly of conflicting decisions not only under

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[4] Mass. Gen. L. Ch. 206, Sec. 27B; N.Y. Sur. Ct. Act, Sec. 296-a; Ohio (Page) Rev. Code, Sec. 2113.81; Oregon Rev. Stats. Sec. 111.070; Wis. (West) Stats., Sec. 318.06 (8)(b). With respect to escheat under the Oregon law in these circumstances, see *State* v. *Pekarek*, 76 Or. A. S. 183, 378 P. 2d 734 (1963).

statutes of different states, but also under the same statute, as to whether circumstances in Yugoslavia meet the required conditions. Even in Pennsylvania, there are decisions, contrary to that of the Court below, that circumstances in Yugoslavia meet the conditions prescribed by that State's statute. *Aras Estate*, 16 D&C 2d 635 (1959); *Estate of Piscak*, 108 Pitts. L.J. 309 (1960). See also, *In the Matter of Offinger*, 28 Misc. 2d 633, 215 N.Y.S. 2d 642 (1961).

Moreover, so long as the decision of the Court below remains unreversed, the not inconsiderable delay and expense incident to showing by proof that the requirements of such State statutes are met, made necessary by the doubt it must engender, will seriously burden cases of estates whose beneficiaries include Yugoslav citizens and residents, although it would appear clearly that the decision of the Court below is in utter discord with this Court's decision in *Kolovrat*.

Tit. 31 U.S.C. Sec. 123, 54 Stat. 1086, 56 Stat. 1028, prohibits the sending of checks or warrants, drawn against Federal funds, to

> a foreign country in any case in which the Secretary of the Treasury determines that postal, transportation, or banking facilities in general, or *local conditions* in the country to which such check or warrant is to be delivered, are such that there is not a reasonable assurance that the payee *will actually receive* such check or warrant and *be able to negotiate the same for full value* * * *. [Emphasis supplied].

Since the enactment of the foregoing on October 9, 1940, the Secretary of the Treasury has from time to time published his determinations thereunder. His

original determinations, Treas. Cir. 655, were made on March 19, 1941, 6 F.R. 1534, March 21, 1941, and subsequent determinations were made as follows: March 6, 1945, 10 F.R. 2625, March 8, 1945; March 19, 1945, 10 F.R. 3080, March 23, 1945; September 25, 1945, 10 F.R. 12216, September 28, 1945; February 19, 1951, 16 F.R. 1818, February 27, 1951; June 7, 1957, 22 F.R. 4134, June 12, 1957; and April 19, 1960, 25 F.R. 3526, April 22, 1960, 31 C.F.R. 211.3. Yugoslavia was included in the Secretary's first determination, dated March 19, 1941, of the countries as to which the Secretary found the necessary assurance lacking. Yugoslavia continued to be included until the Secretary's determination dated September 25, 1945.[5] Yugoslavia has *not* been included in any subsequent determination of the Secretary of the Treasury under this statute, the current determination being dated April 19, 1960, 31 C.F.R. 211.3.

The determinations required to be made by the Secretary of the Treasury under Tit. 31 U.S.C. Sec. 123, are substantially those required by the Pennsylvania and similar State statutes pertaining to the distributive shares of foreign beneficiaries of decedent estates. Accordingly, New York has adopted the policy, in applying its statute, of accepting the Secretary of the Treasury's determinations. *Matter of Braier's Estate*, 305 N.Y. 148, 111 N.E. 2d 424, appeal dismissed *sub nom.*

[5] It should be noted that March 19, 1941, the date of the first determination, which included Yugoslavia, was prior to Yugoslavia's entry into World War II as the result of German and Italian invasions of her territory on April 6, 1941. Yugoslavia was then a monarchy. The present government in Yugoslavia formally succeeded the monarchy on January 31, 1946. At no time since the previous September has Yugoslavia been included in the Secretary of the Treasury's determinations of countries where the required assurance could not be found.

Kalmanc v. *Green*, 346 U. S. 802 (1953); *In the Matter of Offinger*, 28 Misc. 2d 633, 215 N.Y.S. 2d 642 (1961); *In re Doktor's Will*, 18 Misc. 2d 223, 183 N.Y.S. 2d 60 (1959). Whatever may have been the considerations that persuaded New York to pursue such policy, it would appear to be the only course that can constitutionally be followed by a State, for, as this Court said in *Hines* v. *Davidowitz*, 312 U. S. 52, 63, 64 (1941):

> Our system of government is such that the interests of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that *federal power in the field affecting foreign relations be left entirely free from local interference.* As Mr. Justice Miller well observed of a California statute * * *: "If [the United States] should get into a difficulty which would lead to war, or to suspension of intercourse, would California alone suffer, or all the Union?" [Emphasis supplied].

It can hardly be gainsaid that the opinion and decision of the Court below, and the statute on which they rest, trespass heavily on "the field affecting foreign relations", where it is no less imperative now than it was in 1941, that Federal power "be left entirely free from local interference". Statutes, decisions and opinions, such as these, are not mere private words of private persons, but, rather, official pronouncements of States of the United States, addressed no less, or perhaps, even more, to the governments of the countries concerned, than to the litigants involved. See generally, Berman, *Soviet Heirs in American Courts*, (1962) 62 Col. L. Rev. 257. As such, in this tense world, they invite one or more of a variety of consequences, which, of necessity, will burden the Nation, and not merely the State whose action may have affected the deli-

cate balance by which stability is maintained in foreign affairs. Having neither authority nor responsibility under the Constitution in respect of the conduct or regulation of foreign affairs—which are firmly committed to the Federal government exclusively—this Court has held that no State can be permitted to pursue a course of conduct impinging on United States foreign policy as reflected in its official action. *United States* v. *Pink*, 315 U. S. 203 (1942); *Oyama* v. *California*, 332 U. S. 633, 647-650 (1948); *Kolovrat* v. *Oregon*, 366 U. S. 187 (1961). That the Secretary of the Treasury's determinations under Tit. 31 U. S. C. Sec. 123, are not merely factual, but reflect United States foreign policy would seem clear. See Berman, *op. cit. supra*, 62 Col. L. Rev. at 265.

CONCLUSION

The question raised by this petition is a Federal question of substance. It was decided by the Court below in a way not in accord with this Court's decision in *Kolovrat*. The decision of the Court below would both negative an important private right guaranteed by the 1881 Convention, and subordinate Federal foreign policy to a State's domestic policy.

The petition should be granted.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN THE MATTER OF THE ESTATE OF ANTON BELEMECICH, DECEASED	No. 84 January Term, 1963 Appeal from Decree and Amendment Thereto of the Orphans' Court of Delaware County at No. 146 of 1960.

Opinion of the Court

Filed: July 2, 1963

MUSMANNO, J.

Anton Belemecich, a resident of Delaware County, died intestate on October 13, 1958, leaving some $70,000. His estate was administered in the Orphans' Court of that county, which determined the heirs at law to be a sister, a nephew and three nieces living in Yugo Slavia. The auditing judge ordered the funds in the hands of the fiduciary to be paid to the Department of Revenue of the Commonwealth of Pennsylvania without escheat, in compliance with the Act of July 28, 1953, P.L. 674, section 2, 20 P.S. 1156, which provides:

> "Whenever it shall appear to the court that if distribution were made a beneficiary would not have the actual benefit, use, enjoyment or control of the money or other property distributed to him by a fiduciary, the court shall have the power and authority to direct the fiduciary (2) to make payment of the share of

such beneficiary at such times and in such manner and amounts as the court may deem proper or (b) to withhold distribution of the share of such beneficiary, convert it to cash, and pay it through the Department of Revenue into the State Treasury without escheat."

•

This Act carries the sobriquet of "Iron Curtain Act" because its purpose is to protect the moneys, physically in America, but belonging to people who fatefully find themselves behind the Iron Curtain of Communism. It is a commendable and salutary piece of legislation because it provides for the safekeeping of these funds even with accruing interest, in the steel-bound vaults of the Commonwealth of Pennsylvania until such time as the Iron Curtain lifts or sufficiently cracks to allow honest money to pass through and be honestly delivered to the persons entitled to them. Otherwise, wages and other monetary rewards faithfully earned under a free enterprise democratic system could be used by Communist forces which are committed to the very destruction of that free enterprising world of democracy.

The Consul General of Yugo Slavia, Drago Novak, who appeared at the hearing before the Orphans' Court as an attorney-in-fact for the named heirs of Anton Belemecich, excepted to the findings of the Court. His exceptions were dismissed and the Court then amended its adjudication to allow $500 to be paid to each of the heirs through the attorney for the Yugo Slavian consul who was charged

"with the responsibility of securing receipts in writing, containing completely-itemized statements of any and all expenses, charges, and deductions, if any, which may have been made, and the exact amounts actually received by the distributees respectively, shall be submitted to the Court for inspection immediately upon delivery to the distributees."

The Court ordered further that the distributees be permitted to make requests of the Court for additional pay-

ments at appropriate times. The Yugo Slavian consul appealed, contending that the Orphans' Court erred in concluding that the heirs of Anton Belemecich would not have the actual benefit, use, enjoyment and control of the money due them from the estate in question.

In its Adjudication the Court said:

> "There can be no doubt that Yugoslavia is a self-proclaimed Communist state. The fact that there may be at the moment some ideological differences between the U.S.S.R. and Yugoslavia does not change the totalitarian complexion of the present regime in Yugoslavia nor does that government's philosophical, economic and political concepts of the right of a state to confiscate private property without just compensation to the rightful owners inspire this court with any confidence that an award to residents of Yugoslavia would meet the objectives of the public policy of the Commonwealth as enunciated by the legislature in the so-called 'Iron Curtain Act.'"

The appellant, in one of his exceptions in the Court below, maintained that—

> "there is no legally competent evidence before the Court from which it can be found or concluded that Yugoslavia is an 'Iron Curtain' country."

To argue that Yugoslavia is not behind the Iron Curtain is to argue that it is not on the eastern side of the Atlantic Ocean. There are certain well-known, indisputable geographical and historical facts which require no substantive proof in Court, and one of those irrefutable, if unfortunate, realities, is that Yugo Slavia, as the Court below found, is a satellite state where the residents have no individualistic control over their destiny, fate or pocketbooks, and where their politico-economic horizon is raised or lowered according to the will, wish or whim of a self-made dictator.

President Judge Roberts of the Orphans' Court of Erie County, now Justice Roberts, said in the case of Dopierala Estate, 7 Fid. Rep. 262, 263:

> "It is notorious and regrettable that the unfortunate people of Poland and other residents enslaved behind 'Iron Curtain' dictatorship are denied basic human and property rights. Common knowledge and experience indicate that funds transmitted to residents, subject to police state absolutism, rarely reach the intended individual. More frequently the funds are wholly or partially confiscated by unfair rates of exchange or by other direct or indirect police state pressures or devices exerted against the intended recipient or his family, either by the government itself or by its unscrupulous officials or functionaries. *Of these deplorable facts we take judicial notice*, and upon careful consideration of all the attending circumstances, as they now appear, we find that if distribution to this beneficiary were made, she would not have 'the actual benefit, use, enjoyment or control' of her inheritance." *

President Judge Jones of the Orphans' Court of Luzerne County, now Justice Jones, said in Estate of Frank Wosniak, 44 Luz. Leg. Reg. 227:

> "The instant petition requests that funds of one of our deceased nationals be turned over for transmittal to an heir behind the 'Iron Curtain' of Poland, without any convincing assurance or guarantee that the decedent's heir will have the actual benefit, use, enjoyment or control of this fund, and that this fund will not be subject to confiscation in that country. *It is common knowledge that the present Polish national* government is a satellite of the U.S.S.R. The bank to which these funds will be initially transmitted in Poland is under the authority of that satellite government, *and the tribunals which would furnish the receipts are tribunals of that satellite* government. Until world conditions change and there can be assurance that these funds of a deceased national will be properly transmitted to his heir in Poland who will have

* Emphasis throughout supplied.

the freedom to use, and enjoy these funds, we refuse to permit the funds to be taken from our control."

All the known facts of a Sovietized state lead to the irresistible conclusion that sending American money to a person within the borders of an Iron Curtain country is like sending a basket of food to Little Red Ridinghood in care of her "grandmother." It could be that the greedy, gluttonous grasp of the government collector in Yugo Slavia does not clutch as rapaciously as his brother confiscators in Russia, but it is abundantly clear that there is no assurance upon which an American court can depend that a named Yugo Slavian individual beneficiary of American dollars will have anything left to shelter, clothe and feed himself once he has paid financial involuntary tribute to the tyranny of a totalitarian regime.

At the hearing before the lower Court, Julius Rothkopf, a native Yugo Slavian lawyer, who practiced his profession in Yugo Slavia for 19 years before coming to America, and who has since continued his studies of Yugo Slavian law, keeping abreast of all developments in his mother country, testified to the chains of economic restrictions which bind Yugo Slavian citizens. He spoke also of penalties for "economic crimes." This witness's testimony confirmed and verified the conclusions reached through the process of judicial notice.

Drago Novak, the Yugo Slavian Consul General already mentioned, asserted gravely in court that the flag of freedom had never been furled in Yugo Slavia and that there are no restrictions on private ownership or means of production in that country. He did, however, grant that no Yugo Slavian could own more than three houses or employ more than five workers, but he said that any citizen could own up to fifteen automobiles! He did not explain this generosity in vehicular ownership but it could possibly be explained on the basis that there is no reason to limit

the unattainable, nor is there anything to lose in allowing a dreamer the felicity of his fantasies.

The Judge, who heard and saw Drago Novak, obviously placed very little credence in what he said. Novak's testimony, as it appears in the record, does not gather any gloss of increased reliability because of its now being in print. He testified, for instance, that on a trip he made to Yugo Slavia he learned of an instance where a Yugo Slavian received $200,000 from someone in Louisiana. At the then exchange rate of 600 dinars per dollar, this meant that this Yugo Slavian staggered away from the bank with baskets overflowing with 120,000,000 dinars. Novak was unable to give the name of this mythical Yugo Slavian nor describe what were the circumstances which precipitated this avalanching of dinars to this one person in Yugo Slavia.

Apparently emboldened by his own audacious utterances, Novak further declared that if money from an estate in Pennsylvania were sent to Yugo Slavia, the government of that country would not impose any tax on the money. Since it was the responsibility of the Court below to ascertain the facts, we have no difficulty in understanding why it refused to rest its decision on the atmospheric blocks of testimony supplied by Drago Novak.

One revelatory feature in the proceedings below should not go unnoticed in this appellate review. The decision swings on the hinges of the proposition: Can our Courts be assured that the heirs of Anton Belemecich living in Yugo Slavia will actually hear the merry jingle in their pockets of the money left them by their kinsman in the United States? The attorney for the Yugo Slavian consul argued that the evidence showed that:

> "It is positive that a resident and citizen of Yugoslavia would have the actual benefit, use, enjoyment and control of the funds in question if they were transmitted to Yugoslovia."

Yet, when the Orphans' Court of Delaware County ordered that $2500 be sent to the heirs under the care and guidance of this same attorney, he rejected the opportunity to put into effect the very thing he was arguing for. He declared:

> "If, in good faith, such attorney were to send money orders to such heirs, upon condition that he received satisfaction of award from the recipients, he would have no way of determining whether such funds were intercepted and the receipts forged."

He made it even stronger:

> "In the absence of a means or method that would insure the receipt of such funds by the proper persons, the attorney designated by the Orphans' Court to act as a conduit, hereby rejects such appointment."

If the attorney cannot be assured that $2500 would not be intercepted, that the funds would not be taken by the Yugo Slavian Government and the receipts forged, what possible assurance could there be that the total amount of approximately $70,000 would reach those entitled to it? As the attorney for the Commonwealth well put it in his able brief: "We submit that appellant has decimated his own argument."

The appellant argues also that the order of the Court below offends against the treaty of 1887 between the United States and Serbia (the predecessor sovereign nation of the Republic of Yugo Slavia.) The point is not well taken. That treaty provides briefly that there shall be reciprocal rights of inheritance between the citizens of the two nations. Under the decision in this case, there is no denying to the citizens of Yugo Slavia the right of inheritance through American relatives. The Act of the Legislature, upon which the Court based its adjudication is intended, not to breach the sanctity of the treaty mentioned but to guarantee that its provisions are upheld so that the bene-

ficiaries will actually and not only technically or figuratively receive the amounts due them.

Nor does the case of Kolovrat et al. v. Oregon, 366 U.S. 187, cited by the appellant, help his position. The Oregon statute involved in that litigation was a confiscatory one. The one before us is merely custodial. The heirs here have $70,000 coming to them. When the day arrives that the Iron Curtain of distrust and hostility shutting them off from the free world, melts and is molded into an open portal of understanding, good will and mutual respect, then the money left them by their brother and uncle, and which will have been safely kept for them by the Commonwealth of Pennsylvania, will be turned over to them, not only intact but with an augmentation of interest. And let it be hoped that this will happen while there is still healthful life in the beneficiaries so they may enjoy freely and to the utmost the munificence of their kinsman buried in the free land of America.

Affirmed. Costs to be borne by the Estate.

Mr. Justice Cohen files a dissenting opinion.

Dissenting Opinion

Filed July 2, 1963

COHEN, J.

I feel we are bound by Kolovrat v. Oregon, 366 U.S. 187, 198 (1961). In that case, the United States Supreme Court held that a treaty entered into in 1881 between Serbia and the United States was in force between Yugoslavia and the United States and that the Oregon statute limiting the right of nonresident aliens to take either real or personal property in Oregon by succession or testamentary disposition was of no legal effect in so far as it was inconsistent with the treaty. The unanimous opinion stated, inter alia:

> "These treaties and agreements show that this Nation has adopted programs deemed desirable in bring-

ing about, so far as can be done, stability and uniformity in the difficult field of world monetary controls and exchange. These arrangements have not purported to achieve a sufficiently rigid valuation of moneys to guarantee that foreign exchange payments will at all times, at all places and under all circumstances be based on a 'definitely ascertainable' valuation measured by the diverse currencies of the world. Doubtless these agreements may fall short of that goal. But our National Government's powers have been exercised so far as deemed desirable and feasible toward that end, and the power to make policy with regard to such matters is a national one from the compulsion of both necessity and our Constitution. After the proper governmental agencies have selected the policy of foreign exchange for the country as a whole, Oregon of course cannot refuse to give foreign nationals their treaty rights because of fear that valid international agreements might possibly not work completely to the satisfaction of state authorities."

Since I find that the provisions of the "Iron Curtain Act" in question here are likewise inconsistent with this treaty, I must dissent.

Remittitur

THE SUPREME COURT OF PENNSYLVANIA,
Eastern District ss.:
City and County of Philadelphia

THE COMMONWEALTH OF PENNSYLVANIA.

TO THE JUDGES OF THE ORPHANS' COURT OF THE COUNTY OF DELAWARE, GREETING:

WHEREAS, By virtue of our Writ of Certiorari from our SUPREME COURT of Pennsylvania for the Eastern District, returnable in the same Court on the First Monday of January in the year of our Lord one thousand nine hundred and sixty-three a record was brought into the same Court upon appeal by CONSUL GENERAL OF YUGOSLAVIA from your Decree and Amendment made in the matter of No. 146 of

1960, wherein IN THE MATTER OF THE ESTATE OF ANTON BELEMECICH, DECEASED is PLAINTIFF and said APPELLANT is DEFENDANT

And it was so proceeded in our said Supreme Court, that the following judgment was made, to wit:

AFFIRMED. COSTS TO BE BORNE BY THE ESTATE.

MR. JUSTICE COHEN FILED A DISSENTING OPINION.

And the record proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of the General Assembly in such case made and provided) ordered by the said Supreme Court to be remitted to the Orphans' Court for the County of Delaware aforesaid, as well for execution or otherwise as to justice shall appertain. Wherefore we here remit you the record of the judgment aforesaid and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

Witness the Honorable JOHN C. BELL, JR., Chief Justice of our said Supreme Court, at Philadelphia, the 25th day of July in the year of our Lord one thousand nine hundred and sixty-three.

[SEAL] s/ THOMAS P. McGARRITY,
Prothonotary.

APPENDIX B

Adjudication Sur First Account

Filed May 17, 1962

SUR FIRST ACCOUNT OF THE FIDUCIARY OF SAID DECEDENT, FIDELITY-PHILADELPHIA TRUST COMPANY, Administrator.

Before EDWARD LEROY VAN RODEN, President Judge

AND NOW, the above account having been called for Audit April 4, 1960; variously continued, papers handed up October 2, 1961,

Counsel appeared as follows:

Joseph R. Young, Esq., of Butler, Beatty, Greer & Johnson, Esqs., for Accountant.

R. Paul Lessy, Esq., and with him, C. Francis Fisher, Esq., for Consul General of Republic of Yugoslavia, Claimant.

Arnold M. Snyder, Esq., for Commonwealth of Pennsylvania.

Mabel G. Turner, Esq., Assistant United States Attorney for United States of America.

There are no objections to the Account and it is confirmed. NISI.

With respect to the following adjudication the Accountants have leave to make such assignments, transfers and acquittances as may be necessary to consummate the same.

Decedent died October 13, 1958, intestate, survived by neither spouse nor issue and apparently survived by neither parent.

Upon the basis of the testimony submitted at hearings held in open court on July 11, 1960, May 25, June 26 and

October 2, 1961, the court finds that decedent was survived by a sister, Ane Bulic, a nephew, Mato Belemecich and three nieces, Ane Belemecich Kljunak, Maria Belemecich and Pera Belemecich Boscovich, (the said nephew and nieces being the children of Ilija Belemecich, a predeceased brother of the decedent.)

By virtue of the Intestate Laws of the Commonwealth of Pennsylvania, the said sister is entitled to a one-half share of decedent's distributive estate and the said nephew and nieces are each entitled to a one-eighth share thereof.

However, the question of distribution is complicated by the fact that all of said heirs are non-resident aliens, being citizens of and residing in the Republic of Yugoslavia. This phase of the matter will be herinafter more fully considered.

The court is assured that all parties in interest have had actual notice of the filing of the account and of the time and place of audit. In this connection, it is noted that the Consul General of the Republic of Yugoslavia has appeared on behalf of decedent's non-resident alien heirs. It is also noted that the Commonwealth of Pennsylvania and in the United States of America have entered appearances in this matter.

No inheritance tax has yet been paid unto the Commonwealth of Pennsylvania. It is the administrator's position that if the claim of the United States (hereinafter considered) is sustained, then no inheritance tax would be payable to the Commonwealth. For the reasons hereinafter set forth, the court holds that the estate presently before the court is subject to the payment of inheritance tax to the Commonwealth of Pennsylvania at the collateral rate of 15%, computed on the net clear value of the estate for inheritance tax purposes, together with penalty from October 13, 1959 to May 25, 1961 (it having been stipulated by respective counsel that penalty should cease as of said latter date). Accordingly, this adjudication is made sub-

ject to the payment of such inheritance tax and penalty as may properly be found to be due and owing unto the Commonwealth, and the accountant is hereby allowed additional credit for such payment when actually made.

Petitioner avers there are no unpaid claims against the estate of which it has notice or knowledge, except the respective claims of the United States of America, the Consul General of the Republic of Yugoslavia and the Commonwealth of Pennsylvania with respect to distribution of the net assets of the estate. These claims will be hereinafter considered.

The United States Attorney, by his assistant, appeared at the audit and claimed the entire balance for distribution in this estate, under the statutory provisions relating to the General Post Fund (38 U.S.C.A. 5220-5228).

Section 5220 provides that:

"(a) Whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate, all such property, including money and choses in action, owned by him at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund (hereafter in this subchapter referred to as the 'Fund'), a trust fund prescribed by section 725s(a) (45) of title 31.

"(b) The provisions of subsection (a) are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. The acceptance and the continued acceptance of care or treatment by any veteran (admitted as a veteran to a Veterans' Administration facility or hospital) shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective

at his death, of such assets in accordance with and subject to the provisions of this subchapter and regulations issued in accordance with this subchapter. Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1259."

As heretofore noted, upon the basis of the testimony and other competent evidence submitted at the aforementioned hearings, this court holds that the existence and identity of decedent's heirs-at-law have been satisfactorily established, and that his surviving sister and his nephew and three nieces constitute decedent's next-of-kin and heirs-at-law within the purview of the Intestate Laws of this Commonwealth.

At the hearing held on October 2, 1961, the Assistant United States Attorney conceded that in the event of a finding by this court that decedent was survived by heirs-at-law entitled to take under the provisions of the Intestate Laws of Pennsylvania, then the United States of America would have no further interest in this matter. Accordingly, the claim of the United States of America to have the entire balance for distribution awarded to the General Post Fund is hereby disallowed and dismissed.

The Consul General of the Republic of Yugoslavia appeared at the audit and contended that by virtue of the applicable treaty provisions and various rulings of the Department of State and the Attorney General of the United States, he is entitled to receive the distributive shares of Yugoslavian nationals who inherit from decedents domiciled in the United States.

The Department of Revenue of the Commonwealth of Pennsylvania has taken the position that under prevailing conditions it would be undesirable for this court to authorize the transmittal of distributive shares of an estate to non-resident alien heirs residing in Yugoslavia, which is of course behind the so-called "Iron Curtain".

The Act of July 28, 1953, P.L. 674, Section 2, 20 P.S. 1156, provides as follows:

> "Whenever it shall appear to the court that if distribution were made a beneficiary would not have the actual benefit, use, enjoyment or control of the money or other property distributed to him by a fiduciary, the court shall have the power and authority to direct the fiduciary (a) to make payment of the share of such beneficiary at such times and in such manner and amounts as the court may deem proper, or (b) to withhold distribution of the share of such beneficiary, convert it to cash, and pay it through the Department of Revenue into the State Treasury without escheat."

The testimony submitted at the aforementioned hearings is in sharp conflict on the issue of whether residents and citizens of Yugoslavia would have the actual benefit, use, enjoyment and control of the funds in question if transmitted to Yugoslavia.

There can be no doubt that Yugoslavia is a self-proclaimed Communist state. The fact that there may be at the moment some ideological differences between the U.S.S.R. and Yugoslavia does not change the totalitarian complexion of the present regime in Yugoslavia nor does that government's philosophical, economic and political concepts of the right of a state to confiscate private property without just compensation to the rightful owners inspire this court with any confidence that an award to residents of Yugoslavia would meet the objectives of the public policy of the Commonwealth as enunciated by the legislature in the so-called "Iron Curtain Act".

This court is not unmindful of the decisions of the Orphans' Court of Philadelphia County in Aras Estate, 16 D & C, 2d, 635 (1959), and of the Orphans' Court of Allegheny County in Estate of John Piscak, 108 Pitts L.J. 309 (1960), wherein transmittal of funds to Yugoslavia was approved. While this court holds both Judge Bolger

and Judge Cox in the highest esteem, their decisions are not binding upon this court and we are not persuaded by them on this particular point.

It appears to this court that under prevailing conditions and on the basis of the conflicting testimony in this case there is no assurance that the non-resident alien heirs of this decedent will have the beneficial use of their inheritance and that it is more likely that the Yugoslavia government might confiscate their distributive shares if the funds are actually transmitted to Yugoslavia. Accordingly, the request for an award to said non-resident alien heirs must be refused at this time.

The award hereinafter made will be without prejudice to the right of the said non-resident alien heirs to petition for repayment in the manner provided by statute at such time as they may be in a position to meet the burden of proving that they will have the actual possession, benefit, use enjoyment and control of the funds in accordance with the legislative directive.

A petition for the allowance of counsel fees and costs was presented on behalf of former counsel for decedent's heirs-at-law. In the opinion of this court, there is no present justification for the allowance of counsel fees and costs for counsel for the heirs without the express approval of such heirs. No such approval has been submitted to the court. Accordingly, on the present state of the record, the request for allowance of counsel fees and costs is hereby dismissed.

Petitioner avers that decedent was not at the time of death a fiduciary in any other estate.

Conformably to the provisions of the Intestate Laws of Pennsylvania, the "Iron Curtain Act", and the statement of proposed distribution there is awarded unto:

The Department of Revenue of the Commonwealth of Pennsylvania for payment into the State Treasury of the Commonwealth of Pennsylvania without escheat, to be held for the benefit of Ane Bulik, sister of decedent,

½ share of the balance of principal and income;

The Department of Revenue of the Commonwealth of Pennsylvania for payment into the State Treasury of the Commonwealth of Pennsylvania without escheat, to be held for the benefit of Mato Belemecich, nephew of decedent,

⅛ share of the balance of principal and income;

The Department of Revenue of the Commonwealth of Pennsylvania for payment into the State Trasury of the Commonwealth of Pennsylvania without escheat, to be held for the benefit of Ane Belemecich Kljunak, niece of decedent,

⅛ share of the balance of principal and income;

The Department of Revenue of the Commonwealth of Pennsylvania for payment into the State Treasury of the Commonwealth of Pennsylvania without escheat, to be held for the benefit of Maria Belemecich, niece of decedent,

⅛ share of the balance of principal and income;

The Department of Revenue of the Commonwealth of Pennsylvania for payment into the State Treasury of the Commonwealth of Pennsylvania without escheat, to be held for the benefit of Pera Belemecich Boscovich, niece of decedent, 1/8 share of the balance of principal and income;

Distribution shall be made in cash and a schedule thereof is not required.

Upon the filing of orders to satisfy award by the proper representatives of the Department of Revenue of the Commonwealth of Pennsylvania, the administrator and its sureties will be discharged from further liability as such.

Done this 14th day of May, 1962.

By the Court
Edward Leroy van Roden

Order Amending and Modifying Adjudication

Filed October 5, 1962

By an adjudication of the First Account of the administrator of the above-entitled estate of Anton Belemecich, deceased, dated May 14, 1962, conformably to the provisions of the Commonwealth of Pennsylvania, the "Iron Curtain Act", and the Statement of Proposed Distribution, the Court awarded the balance for distribution to five surviving heirs at law of the decedent, to wit, Ane Bulic, a sister, Mato Belemecich, a nephew, Ane Belemecich Kljunak, niece, Maria Belemecich, niece, and Pera Belemecich Boscovich, niece.

These awards were made to the Department of Revenue of the Commonwealth of Pennsylvania for payment into the State Treasury of the Commonwealth without escheat, to be held for the benefit of the five distributees, all of

whom were and still are, residents and citizens of Yugoslavia, a communist country located behind the "Iron Curtain".

Exceptions were filed to said adjudication by the Consul General of the Republic of Yugoslavia as attorney in fact for the heirs. The substance of these Exceptions is: (a) there was no legally competent evidence produced from which the Court could find that Yugoslavia is an "Iron Curtain" country; (b) no evidence was before the Court that the heirs would not receive the actual use, enjoyment and control of the funds if transmitted to Yugoslavia; (c) a treaty between Yugoslavia and the United States prevents the Court from considering such matters; and (d) a bilingual power of attorney signed by the heirs directs the payment to the Consul General as attorney in fact for the heirs.

After careful consideration of the able arguments of counsel as well as the voluminous notes of testimony and exhibits contained in the record in this case, the Court is not convinced of a certainty that the heirs will receive the full amount to which they are entitled.

Therefore, the Exceptions to the adjudication be and the same are hereby dismissed.

However, after consideration of the situation as disclosed by the facts in this case, the Court is of the opinion that there may be a possibility that all, or portions, of the several awards might be transmitted to, and received by, the heirs.

And Now, October fifth, 1962, for the purpose of ascertaining the true facts concerning this problem, the adjudication dated May 14, 1962, is hereby amended and modified as follows, to wit:

> "1. The accountant is ordered and directed to pay the sum of five hundred dollars ($500.00) to Joseph D. Calhoun, Esquire, for professional services performed

by him for the benefit of the heirs of the decedent; and an additional credit is hereby allowd to the accountant in said sum.

"2. It appearing that the balance for distribution as shown by the account, with accretions, still remains in the possession of the accountant, and has not been paid to the Department of Revenue of the Commonwealth of Pennsylvania as directed in the original adjudication, pending the outcome and disposition of the Exceptions filed to said adjudication, it is hereby directed that the accountant shall forthwith pay the entire balance of all moneys on hand to the clerk of the Orphans' Court of Delaware County, to hold the same until further order of this Court.

"3. It is further ordered and decreed that the Clerk of the Orphans' Court, upon receipt of said funds, shall pay therefrom to the said Ane Bulic, Mato Belemecich, Ane Belemecich Klunak, Maria Belemecich and Pera Belemecich Boscovich the sum of five hundred dollars ($500.00) each. Said payment shall be made to R. Paul Lessy, Esq., attorney for the Consul General of the Republic of Yugoslavia, claimant, who is charged with the responsibility of securing receipts in writing, containing completely-itemized statements of any and all expenses, charges, and deductions, if any, which may have been made, and the exact amounts actually received by the distributees respectively, shall be submitted to the Court for inspection immediately upon delivery to the distributees.

"4. The said distributees will be permitted to make further requests to this Court for additional payments at appropriate times, which shall be not before one year shall have elapsed from the date of the payments herein authorized.

BY THE COURT

EDWARD LEROY VAN RODEN, P.J.

APPENDIX C

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND SERBIA, FOR FACILITATING AND DEVELOPING COMMERCIAL RELATIONS.

* * *

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentaries * * *

Who * * * have agreed upon and concluded the following articles:

* * *

Article II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

* * *

In faith whereof the plenipotentiaries of the two high contracting parties have signed the present treaty in duplicate in the English and Serbian languages, and thereto affixed their respective seals.

Done in duplicate at Belgrade this 2-14 day of October, 1881.

EUGENE SCHUYLER [SEAL]
CH. MIJATOVICH [SEAL]

APPENDIX D

AN ACT

To authorize courts to direct fiduciaries to make partial distribution or to pay into the State Treasury without escheat moneys, the use, benefit, enjoyment or control of which would not be available to certain non-resident beneficiaries under certain conditions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Definitions.—The following terms when used in this act, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this section:

"Beneficiary" shall mean and include any legatee, devisee, distributee or other person who is entitled to share in the distribution of money or other property held by a fiduciary and who is not a resident of the United States, its territories or possessions.

"Fiduciary" shall mean and include any executor, administrator, trustee or guardian, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of a court.

"Court" shall mean the court of record having jurisdiction over the fiduciary.

Section 2. Decree of Partial Distribution or of Payment Without Escheat.—Whenever it shall appear to the

court that if distribution were made a beneficiary would not have the actual benefit, use, enjoyment or control of money or other property distributed to him by a fiduciary, the court shall have the power and authority to direct the fiduciary (a) to make payment of the share of such beneficiary at such times and in such manner and amounts as the court may deem proper, or (b) to withhold distribution of the share of such beneficiary, convert it to cash, and pay it through the Department of Revenue into the State Treasury without escheat.

Section 3. Custody of Funds in Commonwealth; Fiduciary Released.—Upon receipt of the money directed to be paid into the State Treasury, the Commonwealth shall assume the custody of such money for the benefit of such beneficiary. The fiduciary, by making such payment, shall thereafter be relieved of and released from any and all liability for any claim or claims which then exist or thereafter arise with respect to such money.

Section 4. Repayment.—Any beneficiary or person, legally entitled to any money which has been paid into the State Treasury under the provisions of this act, may at any time petition the court which directed such payment into the State Treasury for repayment of the same. Upon proof to the satisfaction of the court of the petitioner's ownership of such money and that he will have the actual possession, benefit, use, enjoyment or control thereof, the court shall enter a decree directing the Board of Finance and Revenue to make an order for repayment, payable out of funds in the State Treasury appropriated for that purpose, with interest thereon at the rate of two percentum per annum from the date when the said money was paid into the State Treasury to the date of repayment thereof.

Section 5. Appeals.—Any party in interest may appeal, as in other cases, from any order or decree of the court entered pursuant to the authority of this act.

Section 6. This act shall become effective immediately upon its final enactment; and shall apply to any money or other property of any beneficiary not distributed prior to that date.

APPROVED—The 28th day of July, A. D. 1953.

JOHN S. FISE.

APPENDIX E

From the Yugoslav Embassy to the Department of State, November 4, 1957:

No. 4693

The Embassy of Yugoslavia presents its compliments to the Department of State and has the honor to inform the Department that citizens of Yugoslavia, heirs, next-of-kin, devisees and legatees of deceased residents of the United States, continue in some States to meet with difficulties in being recognized as such.

* * *

The Government of Yugoslavia has always recognized the right of an American citizen to have his funds derived from inheritance in Yugoslavia transferred to him in the United States in Dollars, the legal basis for this right having been stated in the Embassy's note No. 4135 dated March 27, 1957. The Government of Yugoslavia is also unaware of any instance in which an American citizen, an heir or and [sic] beneficiary of a decedent [sic] estate in Yugoslavia, has, upon application therefor, been denied the right to the transfer of his inheritance or the proceeds of the sale thereof, to the United States in Dollars.

* * *

The Embassy avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D.C., November 4th, 1957.

From the Ambassador of Yugoslavia to the Secretary of State, April 18, 1958:

No. 4298

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and, in accordance with talks held between representatives of the Yugoslav Embassy and representatives of the Department of State, has the honor to inform the Honorable the Secretary of State that in the United States there have in the post-war period been various interpretations of Article II of the "Convention for Facilitating and Developing Commercial Relations" concluded between Serbia and the United States on October 2/14, 1881, (also commonly cited the Convention of Commerce and Navigation of 1881, Treaty Series 319, 22 Stat. 936, 2 Malloy's Treaties, ect. [*sic*] 1613.

* * *

In Article 23 of the Convention of Legal Relations between Yugoslavia and Poland, concluded on May 4, 1923, (85 League of Nations Treaty Series 455) the two contracting parties extended rights of inheritance to the nationals of the other as follows:

> "The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition."

It is the construction of the Yugoslav Government that under the most-favoured-nation clause of Article II of the Convention of 1881 citizens of the United States regardless of their whereabouts or residence have had extended to them and are entitled to enjoy the same rights of inheritance from decedents' estates and of property located in

Yugoslavia as nationals of Yugoslavia themselves, and regardless of whether the decedent was a citizen of Yugoslavia, the United States of America or any third country.

As regards the application of the most-favoured-nation clause to the rights of the Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and Argentina, signed at San Jose on July 27, 1853 (10 Stat./Pt. 2, Public Treaties/16 Treaty Series 4, I Treaties/Malloy/20) • • •.

• • •

This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia. It will be observed that in substance the 1853 treaty with Argentina is very similar to the 1923 treaty between Poland and Yugoslavia.

It is further the construction of the Yugoslav Government that by virtue of the most-favored-nation clause and the trird [sic] subparagraph of Article II of the Convention of 1881, American citizens, wherever they may physically be or permanently reside, have and must be accorded the right to withdraw and export, i.e. have transferred to them upon request to the United States or wherever they may direct, moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The interpretation of the Yugoslav Government is also based on the spirit and intentions stated in the preamble to the Convention of Commerce and Navigation of 1881, as well as on the basis of the needs resulting from the relations which prevailed at that time between the two countries.

• • •

In view of the foregoing, the Government of the Federal People's Republic of Yugoslavia would appreciate being advised of the opinion of the Government of the United States on the following:

Whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 and Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and its Citizens of 1948 to safeguard the inheritance rights of American Citizens and to ensure the transfer of the proceeds accruing thereof regardless of their permanent residence, encompassing therefore also those American citizens residing in the United States, and reversely, whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention of 1881 and Article 5 of the Agreement of 1948, to safeguard the inheritance rights of Yugoslav citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those residing in Yugoslavia?

The Yugsolav Ambassador avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D.C., April 18, 1958.

From the Secretary of State to the Yugoslav Embassy, April 24, 1958:

The Secretary of State presents his compliments to the Charge d'Affaires ad interim of the Federal People's Republic of Yugoslavia and acknowledges the receipt of the

D

Embassy's note No. 4298 of April 18, 1958, regarding the interpretation of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), concluded on October 2/14, 1881 between the United States of America and Serbia and presently in force between the United States of America and Yugoslavia. (22 Statutes at Large 963, Treaty Series 319).

* * *

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

* * *

A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property.

* * *

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. * * *

Therefore, in the absence of clear and unmistakable evidence of a contrary intention on the part of the negotiators, it appears that the interpretation most consistent with the purpose of he Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed, the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident*. A review of all relevant correspondence available at the National Archives indicates no intention contrary to this interpretation. As the Supreme Court has said:

> "Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. Hauenstein v. Lynham, 100 U.S. 483, 487; Geofroy v. Riggs, supra, 271; Tucker v. Alexandroff, 183 U.S. 424, 437." Asakura v. Seattle, 265 U.S. 332, 342 (1924).

This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty.

Department of State, Washington, April 24, 1958.

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In the

Supreme Court of the United States

October Term, 1963
No. 566

IN THE MATTER OF THE ESTATE OF
ANTON BELEMECICH, DECEASED

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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In the

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IN THE MATTER OF THE ESTATE OF
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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PRAYER

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, Commonwealth of Pennsylvania, respectfully prays that the Petition for a Writ of Certiorari filed in the above entitled case be denied.

QUESTION PRESENTED

Does the Treaty of 1881 between the United States and Serbia preclude the Orphans' Court of Delaware County from making distribution of an estate of a Pennsylvania decedent in such manner and amounts so as to insure that the heirs actually do receive their inheritance?

STATUTE INVOLVED

The Act of 1953, July 28, P. L. 674, §§2, 3, 4, 20 P.S. §§1156, 1157, 1158 (Pocket Parts), provides as follows:

"§1156. Decree of partial distribution or of payment without escheat.

"Whenever it shall appear to the court that if distribution were made a beneficiary would not have the actual benefit, use, enjoyment or control of the money or other property distributed to him by a fiduciary, the court shall have the power and authority to direct the fiduciary (a) to make payment of the share of such beneficiary at such times and in such manner and amounts as the court may deem proper, or (b) to withhold distribution of the share of such beneficiary, convert it to cash, and pay it through the Department of Revenue into the State Treasury without escheat."

"§1157. Custody of funds in commonwealth; fiduciary released

"Upon receipt of the money directed to be paid into the State Treasury, the Commonwealth shall assume the custody of such money for the benefit of such beneficiary. The fiduciary, by making such payment, shall thereafter be relieved of and released from any and all liability for any claim or claims which then exist or thereafter arise with respect to such money."

"§1158. Repayment

"*Any beneficiary or person, legally entitled to any money which has been paid into the State Treasury under the provisions of this act, may at any time petition the court which directed such payment into the State Treasury for repayment of the same.* Upon proof to the satisfaction of the court of the petitioner's ownership of such money and that he will have the actual possession, benefit, use, enjoyment or control, thereof the court shall enter a decree directing the Board of Finance and Revenue to *make an order for repayment, payable out of funds in the State Treasury appropriated for that purpose, with interest thereon at the rate of two percentum per annum* from the date when the said money was paid into the State Treasury to the date of repayment thereof." (Emphasis supplied.)

STATEMENT OF THE CASE

Anton Belemecich died October 13, 1958 intestate, survived by neither spouse nor issue and apparently survived by neither parent. Decedent was a resident of Delaware County, Pennsylvania at the date of death and his estate was administered in the Orphans' Court of Delaware County at No. 146 of 1960 before the Honorable Edward Leroy van Roden, President Judge.

Four hearings were conducted at which oral testimony was taken and documentary evidence submitted. After hearing the testimony, the court determined the heirs at law of the decedent to be Ana Belemecich, a sister, Mato Belemecich, a nephew, Marija Belemecich, Ana Belemecich, Kljunak and Pija Belemecich, nieces. The heirs are residents of Yugoslavia.

The auditing judge by decree of May 14, 1962 ordered the funds in the hands of the fiduciary to be paid to the Department of Revenue of the Commonwealth of Pennsylvania as custodian for payment to the State Treasury of the Commonwealth of Pennsylvania without escheat, in compliance with the Act of July 28, 1953, P. L. 674, section 2, 20 P.S. 1156.

Exceptions were filed by the Consul General of Yugoslavia as attorney-in-fact for the heirs at law. Thereafter, the Orphans' Court of Delaware County filed an Order Amending and Modifying the Adjudication. The amendment of the court below directed the fiduciary to pay the balance of all monies on hand to

the Clerk of the Orphans' Court of Delaware County to hold the same until further order of court. The Orphans' Court further ordered and decreed that the clerk pay to the named heirs-at-law the sum of $500 each through R. Paul Lessy, Esquire, attorney for the attorney-in-fact, who was charged with the responsibility of securing receipts from the heirs which would reflect the exact amounts actually received by the distributees.

Contrary to the assertions of the petitioner, the Orphans' Court was well aware of the opinion in *Kolovrat et al. v. Oregon*. That court obviously considered the case inapplicable to the present matter for reasons hereinafter set forth in our argument.

The Consul General of the Republic of Yugoslavia appealed the Adjudication and the Amendment thereto to the Supreme Court of Pennsylvania which Court affirmed the court below. The Consul General of Yugoslavia then filed a Petition for Reargument with the Supreme Court of Pennsylvania which petition was denied per curiam. Thence, the Consul General of Yugoslavia filed his Petition for Writ of Certiorari with your Honorable Court.

ARGUMENT

A. The Power To Control the Administration of Decedents' Estates and the Distribution of Estates Is Reserved to the States

The power to control the administration of estates of decedents is reserved to the states and has not been granted to the federal government. U.S.C.A. Const. Amend. 10.; *Wachovia Bank and Trust Co. v. Green*, 73 S.E. 2d 879, 236 N.C. 654.

It is well-recognized that every state possesses the power of regulating the manner and terms upon which realty or personalty within its dominion may be transmitted by last will and testament. The right to succeed to property is created by law and the transferee derives his right to take property of the decedent *under the laws of the state* and the state by statute may make the right subject to burdens imposed. *Plummer v. Coler*, 178 U.S. 115, 44 L. Ed. 998, 20 S. Ct. 829.

In the *Plummer* case the court held that the right to take property by devise or descent is the creature of the law and not a natural right or privilege and, therefore, the authority which confers it may impose conditions upon it.

The court in the *Plummer* case, quoting from the opinion delivered by Chief Justice Taney in *Mager v. Grima*, 8 How. 490, held at 178 U.S. 126:

> "'Now the law in question is nothing more than an exercise of the power which every State

and sovereignty possesses, of regulating the manner and terms upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance, and of prescribing who shall and who shall not be capable of taking it. Every State or nation may unquestionably refuse to allow an alien to take, either real or personal property, situated within its limits either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the State. In many of the States of this Union at this day real property devised to an alien is liable to escheat. And if a State may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy. . . .'"

In the case of *In Re Braier's Estate*, 111 N.E. 2d 424, 305 N.Y. 148, appeal dismissed *Kalmane v. Green*, 346 U.S. 802, 98 L. Ed. 334, 74 S. Ct. 32, the court held that the provision in the Surrogate's Court Act requiring that money to a legatee would be paid to the Surrogate's Court where the conditions are such that a legatee would not have the benefit of payment relates to matters of descent and devolution and treats a matter beyond the scope of The Trading with the Enemy Act and hence is not unconstitutional as invading a legislative area pre-empted by the federal government.

The state's statute was held to be constitutionally valid since it was not diametrically opposed to federal law.

A case closely analogous to the instant case was before your Honorable Court very recently in *Ioannou v. New York*, 371 U.S. 30 (1962). That case dealt with a claim by an assignee who lived in London to estate funds which had been deposited with the Treasurer of the State of New York for the benefit of an assignor (who lived in Czechoslovakia) under a New York statute which provided for such deposit when it appeared that it was improbable that the distributee would have the benefit, use and enjoyment of the legacy. *In that case your Honorable Court dismissed the appeal for want of a substantial federal question.*

Historically the regulation and administration of decedents' estates has been within the jurisdiction of the individual states of the Union. The instant case is entirely a question of the administration and distribution of an estate of a Pennsylvania decedent and therefore should be controlled by Pennsylvania law. There is no direct conflict between the instant case and the federal law as we shall disclose in the succeeding portion of this brief.

B. Kolovrat et al. v. Oregon, Distinguished

It is most important to note that Judge van Roden of the Orphans' Court of Delaware County did order the sum of five hundred dollars ($500) to be paid to each of the five beneficiaries residing in Yugoslavia which award was affirmed by the Pennsylvania Supreme Court.

The size of the estate exceeds seventy thousand dollars ($70,000) and the Orphans' Court was rightfully concerned that the distributees actually receive their inheritance. This is manifested in the Court's Order Amending and Modifying Adjudication wherein said payments were ordered to be made to the attorney for the Consul General of Yugoslavia who is charged with the responsibility of securing receipts in writing, itemizing expenses, charges, and deductions—and reflecting the exact amounts actually received by the distributees. Such receipts were to be submitted to the court for inspection.

It is patently evident that the court was *not depriving* the heirs of their inheritance; on the contrary, the court's ultimate concern was to *insure the receipt* of the funds by the beneficiaries *free from confiscation or appropriation by any party.* Such is the inherent responsibility of the Orphans' Court whether the beneficiary be resident, nonresident or alien. Judge van Roden realized the duty imposed upon him and the responsibility to see that the heirs did receive and enjoy their legacies. This responsibility is reflected in the words of President Judge Jones of the Orphans' Court of Luzerne County, now Mr. Justice Jones of the Pennsylvania Supreme Court in *Estate of Frank Wozniak*, 44 Luz. Leg. Reg. 227 (1954), wherein he stated:

> *"We conceive it to be our duty to exercise the highest degree of care and caution to assure that funds of a deceased American national be transmitted to his heir in a foreign country in such manner that the heir not only physically receive*

> ***the funds but be free to enjoy, use and control the funds. . .***" (Emphasis supplied.)

The Pennsylvania statute clearly prescribes that any beneficiary or person legally entitled to any money may *at any time petition the court for same.* The Pennsylvania courts will and have ordered payment where sufficient proof was adduced that the beneficiary will have the actual possession, benefit, use and enjoyment of the funds. *Aras Estate*, 16 D. & C. 2d 635 (1959), *Estate of John Piscak*, 108 P.L.J. 309 (1960).

Here we have a sizable estate. Before the court will transmit the *entire estate*, it is proceeding with due caution by requiring acknowledgment of the receipt of a portion of the estate. Clearly the court's action is for the benefit of the heirs and not to their detriment as petitioner would have us believe.

Appellant relies almost exclusively on *Kolovrat et al. v. Oregon*, 366 U.S. 187 (1961).

The court's opinion in the *Kolovrat* case was predicated upon the fact that the Oregon court determined that reciprocity did not exist between Oregon residents and Yugoslavian nationals (though the Treaty between the United States and Serbia deemed such reciprocity did exist), and the Oregon court determined that Yugoslavian fluctuation of monetary exchange deprived Oregon citizens of reciprocal rights (though the Bretton Woods Agreement of 1944, 16 Stat. 1401 precludes any state from deciding that Yugoslavian laws do not meet the standards of international agreements concerning world monetary con-

trols). These factors are nonexistent in the instant case.

Preliminarily it is important to note that in 1881 the United States and Serbia concluded a treaty which is in full force and effect between the United States and Yugoslavia. This treaty provides in part that there *shall be reciprocal rights of inheritance* between the citizens of the two high contracting powers.

The Oregon statute provided for reciprocity in determining the right of an alien to take either real estate or personal property by succession or testamentary disposition in the estate of an Oregon decedent. Under the statute an alien heir must establish, as a prerequisite to his rights, that Oregon residents have reciprocal rights in estates of Yugoslavian decedents. If such alien claimant fails to establish proof of reciprocal rights *he is divested of his legacy or inheritance.*

By its very nature, the Oregon statute required the court to determine the existence or nonexistence of reciprocity between citizens of Oregon and citizens of Yugoslavia. Oregon was precluded from determining that reciprocity did not exist since the Treaty of 1881 *deemed* that there was reciprocity between the two nations.

Nevertheless, the Supreme Court of Oregon erroneously found that reciprocity did not exist. That court also erred in interpreting the treaty to apply only to the right of a United States citizen to acquire or inherit property in Yugoslavia only if he is "in Yugoslavia" and to a Yugoslavian citizen to acquire or in-

herit property in the United States only if he is "in the United States."

Under the Oregon statute the State did not take the funds in a custodial capacity for the protection of the heirs but rather confiscated the funds to and for its own use.

We concede that the Treaty of 1881 deems that reciprocity between the two nations regarding rights of inheritance does exist and that a state court is precluded from finding otherwise.

We also concede that the confiscation of these funds by the State of Oregon or any other state is violative of the above treaty.

The controlling distinction is that in the instant case the determination in no way involved the question of reciprocal rights of Pennsylvania residents. Furthermore, and perhaps more important, the Commonwealth's statute is not confiscatory, but on the contrary, is geared to prevent confiscation and to protect the rights of a beneficiary. It imposes the duty on the court to see to it that the beneficiary *does* receive his legacy. This is clearly within the jurisdiction of the Orphans' Court of a state. The courts are duty-bound not only by statute but by inherent power to guard the interests of the heir or beneficiary.

The statutes of this nature in most of the western states are confiscatory, while those of the eastern states are custodial and protective. This distinction is thoroughly discussed in an excellent Law Review article entitled "Distributive Rights of Foreign Beneficiaries as Affected by State Action—Recent Penn-

sylvania Developments," Snyder and Stander, 63 Dickinson Law Review, 1958-59.

On the one hand, the western statutes, including that of Oregon, are substantive in nature. By that we mean that the state takes title to the property, thereby being confiscatory and precluding a foreign heir from any rights he may have to an inheritance.

The eastern states, including Pennsylvania, are procedural in nature and simply provide for delayed distribution and temporary custody pending proof that an heir will have the use, benefit and enjoyment of his legacy. The Pennsylvania statute does not require reciprocity and it does not violate the provisions of the treaty. Furthermore, the Pennsylvania statute is not confiscatory but rather custodial. Nor do we entangle ourselves in the mesh of monetary controls in view of the Bretton Woods Agreement.

This distinction is recognized by the Solicitor General of the United States who was amicus curiae in the *Kolovrat* case. The annotation to the *Kolovrat* case at 6 L. Ed. 2d 1344 dealing with the briefs and appearances of counsel states as one of the Solicitor General's positions:

> "Section 111.070(1)(b) of the Oregon Probate Code, at least in so far as it *precludes* inheritance by an alien whenever any monetary controls exist, has been overridden and superseded by the Bretton Woods Agreement and the overriding federal policy declared thereby." (Emphasis supplied.)

The Commonwealth in no respect is precluding the rights of these heirs, but on the contrary is protecting their inheritance for them.

An analogous situation can be seen in two United States Supreme Court cases, to wit, *First National Bank of San Jose v. State of California*, 262 U.S. 366, 43 S. Ct. Rep. 602 (1923), and *Anderson National Bank v. Luckett*, 321 U.S. 233, 64 S. Ct. Rep. 599 (1944).

The *First National Bank* case dealt with an escheat law of the State of California. The California statute provided that after a prescribed period of dormancy, certain accounts in banks, including national banks, would escheat to the state and the state would thereby have title to the monies. The statute was confiscatory. The national bank asserted that the law was invalid as to them since these banks are instrumentalities of the federal government and such a statute conflicts with the laws of the United States.

The bank asserted that it frustrates the purposes of the national legislation and impairs the efficiency of the bank to discharge its duties. The Supreme Court upheld the contention of the national bank stating:

> "This court has often pointed out the necessity for protecting federal agencies against interference by the state."

In the *Anderson* case a similar statute of the State of Kentucky was involved. However one distinction existed. The Kentucky statute called for the *custody* by the state of such dormant accounts with the right of the rightful owner to thereafter assert his claim.

It was not confiscatory as was the California statute but rather custodial and protective.

The Supreme Court upheld the right of Kentucky to the custody of these funds holding:

> " . . and it is within the constitutional power of the state to protect the interests of depositors . . . by taking them into custody . . ."

The court further held:

> ". . . In all this we can perceive no denial of constitutional right and no unlawful encroachment on the rights and privileges of national banks."

The distinction found to be controlling in the above cases is equally applicable in the present matter.

Clearly then a state may not by substantive legislation confiscate funds and thereby deprive rightful owners of their monies. It is just as clear that a state through procedural legislation may take custody of funds and protect those funds for and on behalf of the rightful owners.

The treaty between the United States and Serbia is *not* diametrically opposed to the action taken by the Orphans' Court of Delaware County. On the contrary, the action of the Orphans' Court directs distribution of a portion of the funds and the Orphans' Court is proceeding to distribute the subject funds to the rightful owners.

As stated in *Zupko Estate*, 15 D. & C. 2d 442, 447 (1958):

> ". . . The treaty did not purport to create special rights of succession in favor of aliens . . ."

The Orphans' Court in its inherent power to guard the legacies of heirs or beneficiaries would no doubt take similar action in the case of a resident beneficiary who for some reason would be temporarily incapacitated or unable to have his legacy free from possible confiscation by others.

The power, the duty, and the obligation of the Orphans' Court to protect the interest of the beneficiaries from confiscation by others and the recognition that the property is held in a temporary and custodial capacity is clearly pronounced in *Dopierala Estate*, 7 Fiduc. Rep. 262 (1957), *Demczuck Estate*, 8 D. & C. 2d 462 (1956), *Aras Estate*, 16 D. & C. 2d 635 (1959) and *Stede's Estate*, 38 D. & C. 209 (1939).

As held in *Zaranco Estate*, 74 D. & C. 462 (1950), and *Zielinski Estate*, 73 D. & C. 81 (1950), relying on *Rocca v. Thompson*, 233 U.S. 317 (1912):

> "A careful study of the treaty under consideration has failed to disclose any pertinent provision which inhibits this court in its recognized obligation to protect the rights of a local decedent's heirs, regardless of their citizenship or residence. In Rocca v. Thompson, 233 U.S. 317 (1912), it was held that a *privilege conferred by the 'most favored nation' clause of a treaty with a foreign nation cannot be construed as intended to supersede the local law as to the administration of estates.*" (Emphasis supplied.)

The Pennsylvania statute is procedural and custodial. It is not substantive and confiscatory. The statute does not preclude an alien from an inheritance; it protects the inheritance for the heir.

This is clearly a question of administration of estates and local law controls. The action of the Orphans' Court was within its powers and jurisdiction and did not violate the treaty.

CONCLUSION

In conclusion, neither the Orphans' Court nor the Commonwealth wishes to confiscate the funds nor to deprive the rightful owners of their legacies. On the contrary, as stated by President Judge Roberts, now Mr. Justice Roberts of the Pennsylvania Supreme Court, in *Dopierala Estate*, 7 Fiduc. Rep. 262 (1957):

> "We seek to protect the beneficiary's inheritance against confiscation or domination by the government of her residence, and to afford her as much enjoyment of her property as present circumstances permit. . . *This temporary protective action is exclusively for the benefit of the beneficiary, and distribution will be made directly to her, just as soon as the court is satisfied that she will enjoy the actual benefit, use and control of the funds awarded to her.*" (Emphasis supplied.)

The treaty is not violated and the Yugoslavian heirs are not precluded from their inheritance nor divested of any rights.

The Orphans' Court decreed a partial distribution to the heirs and wants proof that they have received the funds. Certainly this is not only most reasonable

but would appear to be mandated by the responsibility of the Court to see that *any* heir, whether resident or alien, receives his inheritance.

Respondent submits that the action of the Orphans' Court and the decision of the Pennsylvania Supreme Court is correct, proper, and consonant with federal as well as local law. We further submit that the case presents no substantial federal question and therefore pray your Honorable Court to deny the Petition.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 566

In the Matter of the Estate of
ANTON BELEMECICH, Deceased

THE CONSUL GENERAL OF YUGOSLAVIA AT PITTSBURGH, PENNSYLVANIA, as Attorney-In-Fact for ANE BULIK, MATO BELEMECICH, ANE BELEMECICH KLJUNAK, MARIA BELEMECICH AND PERA BELEMECICH BOSCOVICH, *Petitioner*

v.

COMMONWEALTH OF PENNSYLVANIA

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

PETITIONER'S REPLY BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 566

In the Matter of the Estate of
ANTON BELEMECICH, Deceased

THE CONSUL GENERAL OF YUGOSLAVIA AT PITTSBURGH, PENNSYLVANIA, as Attorney-In-Fact for ANE BULIK, MATO BELEMECICH, ANE BELEMECICH KLJUNAK, MARIA BELEMECICH AND PERA BELEMECICH BOSCOVICH, *Petitioner*

v.

COMMONWEALTH OF PENNSYLVANIA

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

PETITIONER'S REPLY BRIEF

I.

Kolovrat v. Oregon, 366 U.S. 187 (1961) Is Not Distinguishable, and Is Governing Here

1. Respondent's attempt to "distinguish" *Kolovrat* on the basis of a distinction between the Oregon and Pennsylvania statutes, pp. 9-17, is unavailing. It is, of course, true that Oregon's statute denied Yugoslav

residents and citizens all rights to acquire property by inheritance unless the conditions it stipulated were proven to be met in Yugoslavia, while Pennsylvania's denies them only the rights to possess and dispose of property they have acquired by inheritance, unless and until the conditions it stipulates are proven to be met in Yugoslavia. But this is a distinction without difference under Article II of the 1881 Convention in force and effect between the United States and Yugoslavia, which grants most favored nation treatment to Yugoslav citizens. Pet., App. C, p. 21a,

> In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal * * *.

In *Kolovrat*, 386 U.S. at 196, this Court held that under this provision, Yugoslav citizens and residents, next-of-kin of Oregon decedents

> * * * have the same right to inherit their relatives' * * * property as they would if they were American citizens living in Oregon * * *.

Since the right to acquire property, by inheritance or otherwise, and the rights to possess and dispose of such property are granted by the Convention in identical terms, the extent of all such rights must necessarily be identical. Accordingly, the Yugoslav citizens and residents who are the sole beneficiaries of this Pennsylvania estate, have the same right to possess and dispose of the property they inherited from their relative as they would if they were American citizens living in Pennsylvania. Neither the conditions imposed by the court below, nor by Pennsylvania's statute, on the beneficiaries' rights to possess and dispose of such property would, by their terms, apply in the case of an American

citizen living in Pennsylvania. See Section 1, Pennsylvania Act of Assembly, July 28, 1953, 20 Purdon Penna. Stats. §1155; Pet., App. D, pp. 22a, 23a, which expressly provides that Section 2 of the act, applied here by the court below,[1] is reserved for use only in the case of a beneficiary "who is not a resident of the United States, its territories or possessions". It follows that under the 1881 Convention and *Kolovrat*, it cannot be applied in the case of these beneficiaries. Respondent's unsupported statement, p. 17, as to what a Pennsylvania court would "no doubt" do in the case of a resident, is purely speculative and hypothetical. Respondent refers to no case in which any such action was taken by a Pennsylvania court, and, in any event, the Pennsylvania statute is, by its own terms, limited in applicability to non-residents of the United States.

2. The annotation from the Lawyers' Edition report of *Kolovrat*, 6 L.Ed. 2d 1342, at 1344, which respondent quotes, p. 14, is *textually* word for word from page 32 of the Brief for the United States as Amicus Curiae, filed in *Kolovrat* v. *Oregon*, No. 102, October Term, 1960. But while the respondent adds emphasis to the word "*precludes*", by putting it in italics, which the

---

[1] Funds paid into the Pennsylvania State Treasury under Section 2 of the act, are not held in trust, nor are they held for "safekeeping * * * in the steel-bound vaults of the Commonwealth of Pennsylvania", as the court below says. 411 Pa. at 508, 192 A. 2d at 741, Pet., App. A, p. 2a. For, as Section 4 of the act, 20 Purdon Penna. Stats. § 1158, Pet., App. D, p. 23a, shows, a decree directing payment out of the State Treasury to a beneficiary is "payable out of funds in the State Treasury *appropriated for that purpose*, with interest * * * of two percentum per annum * * *." [Emphasis supplied.] In these circumstances, the payment under the act of the beneficiaries' distributive shares into Pennsylvania's State Treasury without their consent, is hardly anything other than a forced loan.

Solicitor General did not, the Solicitor General emphasized the word "*any*", before the words "monetary controls", by putting it in italics, which the respondent does not, and the annotator did not, do. The result is startling. As emphasized by the respondent, the passage is meaningless, for the *only* consequence under the Oregon Act, where its conditions are not proven to be met, is that inheritance is precluded. What the Solicitor General was saying is that since the Bretton Woods Agreement, to which the United States was a party, permitted certain monetary controls, Oregon was not free to preclude inheritance by an alien solely because of the imposition by his country, also a party to the Agreement, of *any* monetary controls; in other words, that Oregon's statute was ineffective to preclude inheritance where the foreign country's monetary controls were permitted by the Agreement. That is, of course, wholly irrelevant here.

3. The "analogous situation" that respondent purports to see, pp. 15, 16, in *First National Bank* v. *California*, 262 U.S. 366 (1923) and *Anderson National Bank* v. *Luckett*, 321 U.S. 233 (1944) is wholly illusory. In *First National Bank*, it was held that a State statute was inapplicable to national banks, as improperly burdening federal instrumentalities, where the statute provided that all bank accounts which had been dormant for twenty years, "escheated" to the State. In *Anderson National Bank*, it was held that national banks were not improperly burdened by a State statute which required banks to report to the State accounts that had been dormant for specified periods, and provided for public notice to be made by the State of the presumed abandonment of such accounts, for the transfer of such accounts to the State after such notice if their owners

failed to claim them, for the subsequent assertion of claims to such accounts, with judicial review, and for vesting of title in the State only after a judicial determination that such accounts had in fact been abandoned, or were bona vacantia. As the Court points out in *Anderson National Bank*, the improper burden of the State statute considered in *First National Bank* was not that it provided for escheat, but that it interfered with the relations between national banks and their depositors by seizing and escheating dormant bank accounts regardless of whether they had been, in fact, abandoned or were bona vacantia. 321 U.S. 250-252. These cases, and the "situation" they present are patently irrelevant here.

Kolovrat is clearly indistinguishable, and it is wholly apposite. The principles it announces, as well as its authority, are governing here.

II.

State Laws With Respect to Inheritance and the Administration of Decedent Estates Must Yield to Treaties of the United States With Which They Are Inconsistent

1. Petitioner is fully in agreement with respondent, pp. 7, 8, 18, that State, not Federal law governs inheritance, and the administration of decedent estates. But, respondent overlooks that in such matters, as in others reserved to the States, rights granted by the United States by treaty, necessarily override inconsistent State law. *Kolovrat* v. *Oregon*, 366 U.S. 187, 190 (1961); *Clark* v. *Allen*, 331 U.S. 515, 517 (1947); *Santovincenzo* v. *Egan*, 284 U.S. 30, 40 (1931); *Nielsen* v. *Johnson*, 279 U.S. 47, 52 (1929); *Hauenstein* v. *Lynham*, 100 U.S. 483, 488, 489 (1880).

2. The respondent misplaces reliance, p. 17, on the misstatement apparently made in two Pennsylvania Orphans' Court opinions, of this Court's holding in *Rocca* v. *Thompson*, 223 U.S. 317 (1912), which they and the respondent also mis-cite. In *Rocca*, an 1878 treaty with Italy granted Italian consuls all the rights granted to consuls of the most favored nation, and a treaty with the Argentine granted Argentine consuls the right, in respect of Argentinians dying in the United States, "to *intervene* in the possession, administration, and judicial liquidation of the estate of the deceased, *conformably with the laws of the country*, for the benefit of the creditors and legal heirs". 223 U.S. at 326. This Court held, as a matter of construction, that the Argentine treaty granted consuls rights of *intervention* only, and, further, that the right claimed thereunder by an Italian consul, to administer the estate of a countryman to the exclusion of the person entitled to administration under State law, would not be conformable with the "laws of the country", i.e. local law. See *Santovincenzo* v. *Egan*, 284 U.S. 30, 36-38 (1931).

That the respondent's reliance on *Rocca* is, in any event, misplaced is emphasized by *Santovincenzo*. There an Italian consul, relying on the same provision of the 1878 treaty with Italy, claimed the right to take the estate of a countryman who died intestate without heirs or next-of-kin, to the exclusion of the State which, under State law, was entitled thereto. The consul relied on a treaty with Persia providing, in substance, that in the case of a Persian dying intestate in this country without heirs or next-of-kin, "his effects shall be delivered up to the consul * * * so that he may dispose of them in accordance with the laws of his country." 284 U.S. at 35, 36. This Court held that

the Italian consul, not the State, was entitled to the decedent's estate, pointing out that the Persian treaty, unlike the Argentine treaty with which *Rocca* was concerned, contained no stipulation that rights under it were to be exercised "conformably with the laws of the country." Nor is there any such provision in the 1881 Convention in force and effect between the United States and Yugoslavia. Pet., App. C, pp. 21a, 22a.

The Pennsylvania statute and the judgment below are, as we have seen, wholly inconsistent with the rights of petitioner's principals under Article II of the 1881 Convention, to possess, and to dispose of property acquired by them by inheritance. See, point I, *supra*. Pennsylvania's statute must yield, and the judgment below cannot be permitted to stand.

III.

Respondent's Restatement of the Question Presented, Misstates It, and Respondent Omits a Relevant Section of the Statute Involved

By its restatement of the question presented, p. 2, the respondent would make it appear that the concern of the court below was whether it was feasible successfully to effect remittances to the beneficiaries through ordinary channels, and that the action of the court below was intended only to assure the actual receipt by the beneficiaries of their distributive shares. But the court below made it clear that its concern was not that their distributive shares could not successfully be remitted to the beneficiaries, but rather, in view of supposed politico-economic conditions in Yugoslavia, that they could; and, further, that its action was intended to insure, not that the beneficiaries would receive their distributive shares, but, on the contrary, that they

would not, at least so long as the supposed conditions continue. Thus, the court below said, 411 Pa. at 514, 192 A. 2d at 744, Pet., App. A, p. 8a:

> * * * The heirs here have $70,000 coming to them. When the day arrives that the Iron Curtain of distrust and hostility shutting them off from the free world, melts and is molded into an open portal of understanding, good will and mutual respect, then the money left them by their brother and uncle, and which will have been safely kept for them by the Commonwealth of Pennsylvania, will be turned over to them, not only intact but with an augmentation of interest. And let it be hoped that this will happen while there is still healthful life in the beneficiaries so they may enjoy freely and to the utmost the munificence of their kinsman buried in the free land of America.

By such restatement, also, the respondent would make it appear that the court below made distribution to the beneficiaries, albeit in a special "manner * * * so as to insure" their receipt of their distributive shares. But no alchemy can transmute into distribution to the beneficiaries, the award of their legacies to the Pennsylvania Department of Revenue for payment into the Pennsylvania State Treasury. Pet., App. A, pp. 1a, 2a, 16a-18a. Nor is it other than a palpable fiction, as the passage last quoted from the opinion of the court below makes all too plain, to say, p. 2, that such awards and payments, even if purportedly "for the benefit of" the beneficiaries, will "insure that the heirs actually do receive their inheritance," or as the court below put it, "guarantee that its [i.e., the 1881 Convention's] provisions are upheld so that the beneficiaries will actually and not only technically or figuratively receive the amounts due them." 411 Pa. at 513, 192 A. 2d at 744, Pet., App. A, pp. 7a, 8a.

The question, then, is not whether Pennsylvania can take measures to assure the receipt by a Yugoslav beneficiary of his distributive share in a Pennsylvania estate, but, rather, whether Pennsylvania may deny a Yugoslav beneficiary his right, under the 1881 Convention, to possess and dispose of his distributive share in such an estate, to the same full extent as though he were an American citizen residing in Pennsylvania. *Kolovrat* v. *Oregon*, 366 U.S. 187, 196 (1961). The respondent, however, would not only restate, and at the same time misstate the question presented. It would also rewrite the act of the Pennsylvania Assembly at the root of the matter, p. 3, by deleting from it its first section, 20 Purdon Penna. Stats. § 1155, which, as already noted *supra* at p. 3, expressly provides that Section 2 of the act, applied here by the court below, is reserved for use only in the case of a beneficiary "who is not a resident of the United States, its territories or possessions". Pet., App. D, pp. 22a, 23a.

IV.

In Conclusion

Contrary to respondent's bald statement, p. 6, petitioner has nowhere asserted that the Orphans' Court was unaware of *Kolovrat*. Indeed, the petition emphasizes, pp. 5, 6, that that court's attention was expressly directed to *Kolovrat* by the petitioner by argument, brief and exception. Nevertheless, *Kolovrat* is not as much as mentioned in either of its opinions. Pet., App. B, pp. 11a-20a. Accordingly, petitioner is not privileged to know whether the Orphans' Court considered *Kolovrat* inapplicable for the reasons assigned by respondent, p. 6, or for any other reasons, or whether it just gave *Kolovrat* no consideration at all. But, whether it did one or the other is without

relevance here. Nor is it relevant, as respondent seems to think, pp. 8, 9, that this Court declined review in *Kalmane* v. *Green*, 346 U.S. 802 (1935) and *Ioannou* v. *New York*, 371 U.S. 30 (1962). While those cases arose under a New York statute not dissimilar from Pennsylvania's, Pet., p. 15, in neither was there any treaty of the United States involved.

Furthermore, in the administration of its statute, New York, unlike Pennsylvania, adheres strictly to federal foreign policy as indicated by the action of the Secretary of the Treasury under the analogous federal statute. Pet., pp. 16-18.

Respondent's resort to a plethora of Orphans' Court opinions, pp. 16-18, for the purposes of Pennsylvania's statute, and the duties of Orphans' Courts, can avail it nothing. For, Pennsylvania's Supreme Court, in its opinion in this case, Pet., App. A, pp. 1a-8a, has spoken authoritatively as to the purposes of the statute, and the concern here is not with the duties of Pennsylvania's Orphans' Courts under Pennsylvania's laws, but with the rights guaranteed to petitioner's principals by a treaty of the United States.

The petition should be granted.

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 566

IN THE MATTER OF THE ESTATE OF ANTON BELEMECICH, DECEASED

THE CONSUL GENERAL OF YUGOSLAVIA AT PITTSBURGH, PENNSYLVANIA, AS ATTORNEY-IN-FACT FOR ANE BULIK, MATO BELEMECICH, ANE BELEMECICH KLJUNAK, MARIA BELEMECICH AND PERA BELEMECICH BOSCOVICH, PETITIONER

v.

COMMONWEALTH OF PENNSYLVANIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinions of the Orphans' Court of Delaware County, Pennsylvania, incorporated in its Adjudication Sur First Account and Order Amending and Modifying Adjudication (Pet. App. 11a–20a), are not reported. The opinion of the Supreme Court of Pennsylvania (Pet. App. 1a–9a) is reported at 192 A. 2d 740.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on July 2, 1963. A timely petition for rehearing was denied on July 23, 1963. The petition for a writ of certiorari was filed on October [redacted], 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

A Pennsylvania statute provides that whenever it shall appear that a beneficiary who is entitled to share in the distribution of an estate and who is not a resident of the United States would not have the actual use or enjoyment of the property if distributed to him, the courts may direct that the distribution be made into the State Treasury without escheat. The question presented is whether the 1881 Treaty of Commerce between the United States of America and Serbia guarantees to Yugoslavian citizens residing in that country the same rights to acquire, possess and dispose of inherited personal property located in the United States as they would have if they were American citizens residing in the United States, thereby precluding application of the Pennsylvania statute to bar a distribution to the heirs of a Pennsylvania decedent who are citizens and residents of Yugoslavia.

TREATY AND STATUTE INVOLVED

The relevant provisions of the 1881 Treaty of Commerce between the United States of America and Serbia, 22 Stat. 963, II Malloy 1613, and the Pennsylvania Act of Assembly of July 28, 1953, P.L. 674, 20 P.S. Secs. 1155–1159, are set forth in App. A, *infra*, pp. 12–15.

STATEMENT

Anton Belemecich, a resident of Pennsylvania, died intestate in 1958, survived by certain next-of-kin who are residents and citizens of Yugoslavia. He left an estate in Pennsylvania which was administered in the Orphans' Court of Delaware County, Pennsylvania. In its Adjudication Sur First Account, that court determined that the Yugoslavian next-of-kin, represented by their attorney-in-fact, the Consul General of Yugoslavia at Pittsburgh (petitioner in this Court), were the decedent's sole survivors entitled to share in his estate under the intestate laws of Pennsylvania (Pet. App. 11a, 12a). The court also determined, however, that there was no assurance that the heirs would have the beneficial use of their inheritance, concluding that the Yugoslavian government might confiscate the distributive shares if the funds were actually transmitted to Yugoslavia. Accordingly, under the authority of the Pennsylvania Act of Assembly of July 28, 1953, popularly called the "Iron Curtain Act," App. A, *infra*, pp. 13–15, the Orphans' Court refused to order distribution of the estate. Instead, it made a cash award of the share of each heir to the Department of Revenue of the Commonwealth of Pennsylvania for payment into the state treasury without escheat, to be held for the benefit of the respective heirs (Pet. App 16a–18a).[1]

[1] The court later amended and modified this order to permit a conditional distribution of $500 to be made to each heir through petitioner's attorney. The remainder of the monies was ordered to be paid to the clerk of the court pending further order (Pet. App. 19a–20a).

On appeal, the Supreme Court of Pennsylvania, with one dissent, affirmed (Pet. App. 1a–9a). The majority held (1) that the order of the Orphans' Court did not offend the 1881 Treaty of Commerce between the United States of America and Serbia, App. A, *infra*, pp. 12–13, because that treaty provides only that there shall be reciprocal rights of inheritance between citizens of the two nations, and the decision in this case does not deny to the citizens of Yugoslavia the right of inheritance through American relatives; and (2) this Court's decision in *Kolovrat* v. *Oregon*, 366 U.S. 187, is not controlling since the Oregon statute involved there was a confiscatory one, while the one involved here is merely custodial (Pet. App. 7a–8a).

INTEREST OF THE UNITED STATES

In upholding the application of the Pennsylvania statute to a Yugoslavian beneficiary, the Supreme Court of Pennsylvania has construed the 1881 Treaty of Commerce between the United States and Serbia in a manner which is of doubtful correctness in light of *Kolovrat* v. *Oregon*, 366 U.S. 187. The correct construction of the 1881 Treaty is a matter of considerable importance to the United States in the conduct of its foreign relations,[2] particularly since the United States is signatory to numerous other similar treaties. It was for this reason that the United States participated as *amicus curiae* in the *Kolovrat* case.

[2] The Yugoslavian Government has called the attention of the Department of State to the decision of the court below (see App. B, *infra*, pp. 16–17).

REASONS FOR GRANTING THE WRIT

In *Kolovrat* v. *Oregon*, this Court held that application of an Oregon statute—one which restricted the rights of non-resident aliens to inherit property located in that State—so as to bar inheritance by Yugoslavian citizens and residents was in conflict with the Treaty of Commerce of 1881 between the United States and Serbia. Broadly, the Court concluded that under this treaty a Yugoslavian has the same right to inherit his relatives' personal property located in the United States as he would if he were an American citizen residing in the State where the property is located.

In the instant case, the Supreme Court of Pennsylvania has held that a Pennsylvania statute which in terms restricts the rights of inheritance of all non-resident beneficiaries was properly applied to bar distribution of an estate to beneficiaries who are citizens and residents of Yugoslavia. The holding denies to these beneficiaries rights of inheritance equal to those enjoyed by American citizens residing in Pennsylvania and similarily raises important questions as to the effect of the Treaty of 1881.

1. In 1953, Pennsylvania adopted its so-called "Iron Curtain Act" (App. A, *infra*, pp. 13–15), which establishes a procedure for withholding distribution of money or property to beneficiaries who are not residents of the United States, whenever it appears that such beneficiaries "would not have the actual benefit, use, enjoyment or control of the money or other property distributed * * *." Upon such a finding, the Act empowers the courts to direct the fiduciary to

"withhold distribution of the share of such beneficiary, convert it to cash, and pay it through the Department of Revenue into the State Treasury without escheat" (Sec. 2, App. A, *infra*, p. 14). Section 4 of the Act provides that the courts may order repayment of the funds with interest at 2 percent upon petition of any beneficiary and proof "that he will have the actual possession, benefit, use, enjoyment or control thereof * * *" (App. A, *infra*, pp. 14–15).

In this case, the Orphans Court of Delaware County, affirmed by the Supreme Court of Pennsylvania, applied the statute to bar distribution of property located in Pennsylvania to heirs who are citizens and residents of Yugoslavia. It did so over objections that this course would conflict with the Treaty of Commerce of 1881 (Article II), which guarantees that the citizens of the signatory countries are to be "free to receive, hold and dispose of property by trading, donation, marriage, inheritance or any other manner 'under the same conditions as the subjects of the most favored nation.'" *Kolovrat* v. *Oregon*, 366 U.S. at 193. As this Court recognized in *Kolovrat*, this most-favored-nation provision in turn grants to Yugoslavian citizens all the rights and privileges accorded in the Treaty of Friendship, Commerce, and Navigation between the United States and the Argentine Confederation of 1853, 10 Stat. 1005, 1009, which declares (Article IX):

> In whatever relates to * * * acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, * * *

> the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights, as native citizens * * *.

If the provision of the Argentine Treaty relating to "native citizens" accords Yugoslavian citizens resident in Yugoslavia the same rights to acquire and dispose of property that they would have if they were citizens of the United States resident in this country, the decision below cannot stand.[3]

2. In *Kolovrat* v. *Oregon,* this Court, after an intensive analysis of the Treaty of 1881, gave the provision for "national treatment" precisely this interpretation, stating (366 U.S. at 196):

> We hold that under the 1881 Treaty, with its "most favored nation" clause, these Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Oregon * * *.

We recognize that the issue in *Kolovrat*—as distinguished from that presented here—did not require the Court to rule that under the 1881 Treaty the standard for treatment of Yugoslavian claimants is that accorded American citizens *residing in the United States.* The Oregon statute there involved[4] applied

[3] It is, of course, beyond question that no state law or policy can abrogate rights guaranteed to foreign citizens in treaties entered into by the United States. *Kolovrat* v. *Oregon,* 366 U.S. 187; *Clark* v. *Allen,* 331 U.S. 503, 515, 517.

[4] Oregon Rev. Stat., Sec. 111.070 provides:

"(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as

only to non-resident aliens, barring their inheritance of property located in Oregon under certain circumstances. Therefore, it may be argued that resolution of the precise issue presented in *Kolovrat* required the Court to determine only that the Treaty of 1881 guarantees to Yugoslavian residents rights of inheritance equal to those enjoyed by American citizens. The fact remains that the opinion is not so narrowly drawn. The Court's examination of the treaty provisions led it to conclude that the rights of Yugoslavians are to be equated with the rights of resident citizens of the United States.

Moreover, the Supreme Court of Pennsylvania did not suggest that *Kolovrat* is to be distinguished on

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inhabitants and citizens of the United States, is dependent in each case:

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

"(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property."

the basis of the possible application of the Pennsylvania statute to non-resident United States citizens. Rather, it stressed the fact that, while the Oregon statute provided for an escheat, the Pennsylvania act provides that the Commonwealth of Pennsylvania is to assume custody of the monies for the benefit of the beneficiaries, who may, upon an appropriate showing, obtain repayment. This line cannot be drawn. Article II of the 1881 Treaty makes no distinction among the rights of "acquiring, possessing or disposing" of personal property. All are guaranteed equally.[5] Indeed, the very sense and meaning of Article II would be unnaturally strained if the rights of "possessing" and "disposing" of property were accorded any lesser treatment than the right of "acquiring" it, guaranteed in the same sentence and phrase. Therefore, although this Court's opinion in *Kolovrat* mentions only the right to inherit personal property, it is obvious that the Court's pronouncement extends with equal force to the right of possessing it.

3. The proper interpretation of the relevant treaty provisions, if not already settled, should be laid to rest. It is of obvious concern to the Government of Yugoslavia which has called the decision of the court below to the attention of the Department of State (see App. B, *infra,* pp. 16–17). It affects other foreign governments as well. The United States has entered into numerous treaties which contain provisions similar to those of the 1881 Treaty with Serbia.[6]

[5] See App. A, *infra*, p. 12.

[6] See, e.g., Consular Convention with France of 1853, 10 Stat. 992, I Malloy 528; Treaty of Friendship, Commerce, and Navigation, between the United States and the Argentine Confedera-

The approach adopted by the Pennsylvania courts has added potential impact in view of the fact that numerous States have enacted similar statutes.[7] The interrelation of such statutes and the provisions of United States treaties has already been a subject of divergent views in the state courts.[8]

Finally, we point out that the decision of the court below is likewise of prospective importance to American legatees and heirs of foreign decedents. If the 1881 Treaty has only the limited meaning attributed to it below, it is reasonable to expect that the foreign signatories to treaties of this type may impose added restrictions upon the claims of American citizens.

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tion of 1853, 10 Stat. 1005, I Malloy 20; Convention with the Swiss Confederation of 1850, 11 Stat. 587, II Malloy 1763; Convention with Brunswick and Luneburg of 1854, 11 Stat. 601; Treaty of Amity, Commerce, and Consular Privileges between the United States and the Republic of Salvador, 1870, 18 Stat. 725; Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Peru, 1870, 18 Stat. 698.

[7] Gen. Stat. of Connecticut (1958 Revision), Sec. 45-278, C.G.S.A., Sec. 45-278; Florida Stat. Ann., Sec. 731.28; Ann. Code of Maryland, Art. 93, Sec. 161; Ann. Laws of Massachusetts, Ch. 206, Sec. 27A; New Jersey Pub. Laws, Ch. 148, Sec. 1 (1940), N.J.S.A., Sec. 3A:25-10; New York Sur. Ct. Act, Sec. 269-a; Ohio Rev. Code Ann., Sec. 2113.81; Gen. Laws of Rhode Island, Sec. 33-13-13; Wisconsin Stat. Ann., Sec. 318-06(8). In addition to the Pennsylvania provision involved in this case, see also Pennsylvania P.L. 512, Art. VII, Sec. 737 (1956), 20 P.S. Sec. 320.737.

[8] For example, the decisions of *In re Offinger's Estate*, 28 Misc. 2d 633, 215 N.Y.S. 2d 642, under New York Sur. Ct. Act, Sec. 269-a, and *Aras Estate*, 16 D & C 2d 635, under the Pennsylvania statute involved in this litigation, both involved Yugoslavian residents, yet reached a result contrary to the one affirmed by the Supreme Court of Pennsylvania below.

CONCLUSION

For the reasons stated above, we believe that the question presented by this case warrants review and that the petition for a writ of certiorari should be granted.

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NOVEMBER 1963.

APPENDIX A

Treaty of Commerce Between The United States of America and Serbia

* * * * *

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

Who * * * have agreed upon and concluded the following articles:

* * * * *

Article II

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

* * * * *

In faith whereof the plenipotentiaries of the two high contracting parties have signed the present treaty in duplicate in the English and Serbian languages, and thereto affixed their respective seals.

Done in duplicate at Belgrade this 2–14 day of October 1881.

[SEAL] EUGENE SCHUYLER.
CH. MIJATOVICH.

PENNSYLVANIA ACT OF ASSEMBLY OF JULY 28, 1953

LAWS OF PENNSYLVANIA (1953), SECS. 1–6 (P.L. 674, 20 P.S. SECS. 1155–1159)

No. 209

AN ACT

To authorize courts to direct fiduciaries to make partial distribution or to pay into the State Treasury without escheat moneys, the use, benefit, enjoyment or control of which would not be available to certain non-resident beneficiaries under certain conditions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

SECTION 1. Definitions.—The following terms when used in this act, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this section:

"Beneficiary" shall mean and include any legatee, devisee, distributee or other person

who is entitled to share in the distribution of money or other property held by a fiduciary and who is not a resident of the United States, its territories or possessions.

"Fiduciary" shall mean and include any executor, administrator, trustee or guardian, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of a court.

"Court" shall mean the court of record having jurisdiction over the fiduciary.

SECTION 2. Decree of Partial Distribution or of Payment Without Escheat.—Whenever it shall appear to the court that if distribution were made a beneficiary would not have the actual benefit, use, enjoyment or control of money or other property distributed to him by a fiduciary, the court shall have the power and authority to direct the fiduciary (a) to make payment of the share of such beneficiary at such times and in such manner and amounts as the court may deem proper, or (b) to withhold distribution of the share of such beneficiary, convert it to cash, and pay it through the Department of Revenue into the State Treasury without escheat.

SECTION 3. Custody of Funds in Commonwealth; Fiduciary Released.—Upon receipt of the money directed to be paid into the State Treasury, the Commonwealth shall assume the custody of such money for the benefit of such beneficiary. The fiduciary, by making such payment, shall thereafter be relieved of and released from any and all liability for any claim or claims which then exist or thereafter arise with respect to such money.

SECTION 4. Repayment.—Any beneficiary or person, legally entitled to any money which has been paid into the State Treasury under the provisions of this act, may at any time petition the court which directed such payment into the State Treasury for re-

payment of the same. Upon proof to the satisfaction of the court of the petitioner's ownership of such money and that he will have the actual possession, benefit, use, enjoyment or control thereof, the court shall enter a decree directing the Board of Finance and Revenue to make an order for repayment, payable out of funds in the State Treasury appropriated for that purpose, with interest thereon at the rate of two percentum per annum from the date when the said money was paid into the State Treasury to the date of repayment thereof.

SECTION 5. Appeals.—Any party in interest may appeal, as in other cases, from any order or decree of the court entered pursuant to the authority of this act.

SECTION 6. This act shall become effective immediately upon its final enactment; and shall apply to any money or other property of any beneficiary not distributed prior to that date.

Approved the 28th day of July A.D. 1953.

JOHN S. FINE.

APPENDIX B

PRO MEMORIA

The attention of the Department of State is called to the judgment of the Supreme Court of Pennsylvania (Eastern District) No. 84, January Term, decided July 2, 1963, in the matter of the estate of Anton Belemecich, deceased.

It appears obvious that the above mentioned judgment of the Supreme Court of Pennsylvania runs contrary to Article II of the Convention between the United States of America and Serbia for Facilitating and Developing Commercial Relations of October 14, 1881, 22 Stat. 968, T.S. 320, and to Article 5 of the Agreement between the Governments of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals, of July 19, 1948, 62 Stat. 2658, T.I.A.S. 1803.

It is recalled that the Supreme Court of the United States in the case of *Andja Kolovrat, et al., Petitioners* v. *Oregon,* No. 102, October Term, 1960, interpreting the above mentioned treaties and the International Monetary Fund (Bretton Woods) Agreement of 1944, 60 Stat. 1401, T.I.A.S. 1501, to which the United States of America and Yugoslavia are signatories, ruled that Yugoslav nationals, regardless of their residence, are entitled to inherit property in the United States as well as to have such inherited property transferred to them to Yugoslavia.

It appears appropriate to recall the note to the Secretary of Yugoslavia from the Department of State, dated April 24, 1958, 211.683/4–1858, by which the Department of State expressed its opinion that the

rights of acquisition, possession, or disposition of property, including the rights of inheritance and transfer of proceeds thereof, in the United States are accorded to Yugoslav nationals irrespective of their residence and of the decedent's nationality.

It is intended, in the circumstances, to apply as promptly as possible on behalf of the Yugoslav heirs to the Supreme Court of the United States for a writ of certiorari.

[YUGOSLAVIAN EMBASSY]

SEPTEMBER 3, 1963.

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